

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6211

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-6211

FRED CHERRY,

Plaintiff-Appellant

v.

THE POSTMASTER GENERAL OF THE UNITED STATES,

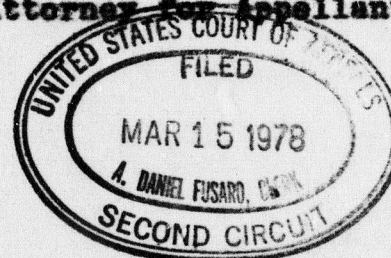
Defendant-Appellee

On Appeal From The United States
District Court for The Eastern District
of New York

APPENDIX

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CHERRY et ano U3FO

PROCEEDINGS

DATE	NR.	PROCEEDINGS	
8-12-76		Complaint filed. Summons issued.	(1)
9-17-76		Summons ret and filed/executed.	(2)
10-8-76		By COSTANTINO, J.- Order dtd. 10-7-76 extending time to answer complaint to 11-11-76 filed.	(3)
11-12-76		ANSWER filed.	(4)
12-7-76		Letter dtd 12-7-76 to Clerk from plntff Cherry re temporary wihter residence filed.	fy
12-27-76		Letter dtd 12.21.76 to Clerk from plntff Cherry re temporary wihter residence filed.	(5)
12-27-76		Plntff's Cherry's interrog. to defendant filed.	(6)
1-31-77		By COSTANTINO, J Order dtd 1-31-77 that the time for deft to answer plttf Cherry's interrogatories to 3-28-77 filed.	(7)
3-28-77		Deft's reponses to plttf's interrogatories dtd 12-22-76.	(8)
5/21/77		Request forproduction of documents under Rule 34 by plttf filed.	(9)
6-29-77		Interrogatories to deft filed. mg	(10)
7-18-77		Notice of motion ret. 7-28-77 for an order convening a three-judge court filed.	(11)
7/28/77		Before COSTANTINOJ. Case called. Motion for an order convening A 3 Judge Court - adjd to 9/7/77.	tk
8-16-77		Responses made on behalf of Postmaster General Benjamin F. Bailar to plttfs' interrogatories dtd June 21 & 28, 1977 filed.mm	(12/13)
9/1/77		Notice of cross-motion returnable 9/7/77 at 10:00 a.m. for an order dismissing the complaint filed with memo of law in opposition to plttfs motion to convene a three Judge Court and in support of defts motion to dismiss filed.	tk (14 &
9/7/77		Before COSTANTINOJ. - Case called. Motion for an order dismissing the complaint, argued and granted. Submit order.	tk -----
9/7/77		Before COSTANTINOJ, - Case called. Motion argued for an order convening a 3 Judge Court, and denied.	tk -----
9/7/77		By Costantino, J Order dtd 9/7/77 filed re that deft's time to answer plttf's interrogatories is extended to 8/19/77 and plttf's motion to convene a three judge court is adjd until 9/7/77 etc.jlj	(16)
9/12/77		By COSTANTINO, J. Order dated 9/12/77/that the Court finds no justiciable case or controversy and that Plttf's motion for 3-judge court is denied and that Deft's motion to dismiss is granted.	(17)
9/22/77		Notice of motion ret 10/5/77 for an order vacating the judgment entered on the docket 9/12/77 etc.jj	(18)
10/5/77		Before Costantino, J-case called-motion submitted=decision reserved.jj	
10/17/77		By Costantino, J.- Order dtd 10/14/77 Denied plttf's motion to vacate filed.	

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FRED CHERRY & ALAN CHARMATZ,

Plaintiffs,

-against-

THE POSTMASTER-GENERAL OF THE UNITED STATES,

Defendant.

76 Civ.

COMPLAINT

Plaintiffs, pro se, complaining of the defendant, The Postmaster-General of the United States, allege:

1. This court has jurisdiction under Article III, Section 2, of the United States Constitution, under 28 U.S.C. 1337, 1339, 1355, 1356, and 1361. The matter in controversy exceeds the sum or value of Twenty (\$20.00) Dollars, exclusive of interest and costs.

2. One of the purposes of this action is to enjoin the enforcement, operation, and execution of acts of Congress for repugnance to the Constitution. Hence a three-judge court is required to be convened pursuant to 28 U.S.C. 2282, 2284.

3. The defendant is The Postmaster-General of the United States.

4.(a) The first plaintiff, Fred Cherry, is a natural-born citizen of the United States.

(b) Said first plaintiff is engaged in disseminating news and editorial comment on matters of general political, religious, and sociological significance.

(c) In furtherance of said activity, the first plaintiff has been attempting to mail post cards recently, a true copy of the message side of one of said post cards being herein annexed as Exhibit "A".

(d) Said first plaintiff has attempted to mail said post cards from Brooklyn, New York, New York, New York, and San Juan, Puerto Rico.

5.(a) The information and comment set forth on the message side of said post cards is true; is of general political, religious, and sociological significance; and is fair comment upon to conduct and character of persons and organizations in respect of public affairs.

(b) The information and comment set forth on said post cards is being disseminated with good motives and for justifiable ends.

(c) All persons and organizations referred to on said post cards, either directly or by implication, are public figures.

(d) Said post cards are not libelous.

(e) Said post cards are not threatening.

(f) Said post cards do not bend freedom into license.

6. The first plaintiff intends to attempt to mail differently worded post cards in the future. Said postcards which the first plaintiff intends to attempt to mail in the future will comply with all the provisions of paragraph # 5, supra. The first plaintiff also intends to attempt to mail more copies of the post card referred to in paragraph # 4, supra.

A 7.(a) In 1971 the plaintiffs in the present action filed a similar action in the United States District Court for the Southern District of New York.

(b) On that occasion the defendant made representations to that court to the effect that the defendant had ceased enforcing 18 U.S.C. 1718 & 39 U.S.C. 3001.

(c) As a result of the representations made by defendant on that previous occasion, that court, in an opinion published at 332 F. Supp. 785, held that the previous action was mooted.

(d) In spite of the representations made to that court in 1971, the agents of the defendant have repeatedly seized and withheld from delivery the post cards referred to in paragraph # 4, supra, which the first plaintiff has placed in the mails, and have repeatedly refused to accept other copies of said cards for mailing, and have repeatedly returned other copies of said cards to the first plaintiff, which the first plaintiff had placed in the mails. These events took place in 1974, 1975, and 1976, in Brooklyn, New York, New York, New York, and San Juan, Puerto Rico.

(e) The agents of the defendant have been interfering with the first plaintiff's mail, as set forth in paragraph # 7(d), supra, pursuant to 18 U.S.C. 1718 and 39 U.S.C. 3001.

8.(a) The second plaintiff, Alan Charmatz, is a natural-born citizen of the United States.

▷ (b) Said Alan Charmatz alleges, in his own right as an addressee, that the defendant is violating his right to receive the post cards placed in the mail by the first plaintiff.

9.(a) The post cards referred to in paragraph # 4, supra, comply with all federal, state, and local laws and comply with all rules and regulations of the Postal Service.

(b) Said post cards are properly classified as "First Class Mail".

10.(a) It had long been the deliberate policy of the Post Office Department, and it is now the deliberate policy of the Postal Service, to permit newspapers and magazines to be sent through the mails and delivered, with certain material exposed to view on the exterior surfaces of said newspapers and magazines, clearly visible to the Postal Service employees delivering said newspapers and magazines. The certain material referred to in the previous sentence would violate 18 U.S.C. 1718 if said certain material were to be set forth on a post card, and a post card with said certain material set forth on its surface would, if placed in the mail, be seized, detained, impounded, forfeited, and destroyed by the Postal Service.

(b) If the material set forth at Exhibit "A" were to be printed on the cover of a magazine or the front or rear pages of a newspaper, said newspaper or magazine would be accepted for mailing and delivered by the Postal Service, even though said

material were exposed to view on the exterior surfaces of said magazine or newspaper, clearly visible to the Postal Service Employees delivering said newspaper or magazine.

11. Pursuant to Section 123.44(f) of the Postal Service Manual, the Postal Service claims that its authority to seize, detain, impound, forfeit, and destroy the post cards referred to in paragraph # 4, supra, stems from 18 U.S.C. 1718 & 39 U.S.C. 3001.

12. Plaintiffs have no adequate remedy at law, they will be compelled to resort to a multiplicity of actions and will suffer irreparable harm unless the relief requested is granted.

WHEREFORE, plaintiffs request that:

13. Jurisdiction be taken by a three-judge court, pursuant to 28 U.S.C. 2282, 2284.

14. The court, in pursuance of its jurisdiction under 28 U.S.C. 2282, issue a permanent injunction enjoining the defendant, his successors and subordinates, from seizing or detaining or impounding or forfeiting or destroying or in any other manner impeding the delivery to the addressees of the post cards referred to in paragraph # 4, supra.

15. The court, pursuant to 28 U.S.C. 2201-2202, render a declaratory judgment that 18 U.S.C. 1718 is unconstitutional on its face and as applied in that it provides for the suppression of a class of speech protected, in both mode of speech and content of speech, by the First Amendment to the United States Constitution.

16. The court, pursuant to 28 U.S.C. 2201-2202, render a declaratory judgement that 18 U.S.C. 1718 is unconstitutional on its face and as applied in that the discrimination between newspapers and magazines on the one hand, and post cards on the other hand, as set forth in paragraph # 10, supra, violates both the First Amendment and the due process clause of the Fifth Amendment to the United States Constitution.

17. The court, pursuant to 28 U.S.C. 2201-2202, render a declaratory judgment that 39 U.S.C. 3001 is unconstitutional on its face and as applied in that it permits The Postmaster-General, sua sponte, without any notice or hearing, to suppress speech presumptively entitled to the protection of the First Amendment to the United States Constitution.

18. The court, pursuant to 28 U.S.C. 2201-2202, render a declaratory judgment that 39 U.S.C. 3001 is unconstitutional on its face and as applied in that it violates the First Amendment to the United States Constitution because it does not contain the following procedural safeguards:

I. The Postal Service must have the burden of instituting judicial proceedings, and the burden of proof.

II. No restraint may be imposed prior to an adversary judicial hearing.

III. A prompt judicial determination must be assured.

19. The court, pursuant to 28 U.S.C. 2201-2202, render a declaratory judgment that 39 U.S.C. 3001 is unconstitutional on its face and as applied in that it permits the Postal Service to forfeit post cards without a judicial determination; said forfeiture being in violation of the due process clause of the Fifth Amendment to the United States Constitution.

20. The court, pursuant to 28 U.S.C. 2201-2202, render a declaratory judgment that 39 U.S.C. 3001 is unconstitutional on its face and as applied in that it provides for the forfeiture of property exceeding twenty dollars in value without a trial by jury; said forfeiture being in violation of the Seventh Amendment to the United States Constitution.

21. The court grant such other and further relief as may be just and proper in the premises.

Alan Charmatz

ALAN CHARMATZ
Plaintiff, pro se
Post Office Address
401 East 89th Street
New York, N.Y. 10028

Fred Cherry

FRED CHERRY
Plaintiff, pro se
Post Office Address
Post Office Box 1017
Brooklyn, N.Y. 11202

N. Y. CITY COUNCILMEN SELL OUT TO HOMOSEXUAL CHILD-MOLESTERS

ARE YOU AWARE that Carter Burden, Miriam Friedlander, Reverend Louis R. Gigante, Mrs. Carol Gellitzer, Arthur J. Katzman, Stephen R. Kaufman, Anthony J. Mercorella, Luis A. Nardo, Ms. Mary Pinkett, Edward L. Sadowsky, Harry Sallman, Frederick E. Samuel, Stanley Simon, Robert S. Steingut, Henry J. Stern, Ramon S. Velez, Robert F. Wagner, Jr., and Theodore S. Weiss, all of whom are members of the New York City Council, have sold out to the organized homosexual movement of America, and are aiding and abetting homosexuals to commit sodomy on children?

There is, at present, a bill before the New York City Council, which, if enacted into law, would force the schools of New York City to hire homosexual child-molesters as teachers. All the above-named members of the New York City Council have voted in favor of this bill. The bill was narrowly defeated on May 23rd of this year. However, since then, the bill has been reintroduced by Carter Burden, one of the bill's sponsors. Theodore Weiss, another sponsor of the bill, predicts that the bill will be enacted into law after Election Day in November, when the will of the people may be safely disregarded.

Leaders of various homosexual organizations, when speaking in behalf of pro-homosexual legislation such as the bill under discussion, claim that homosexuals, in general, are not child-molesters. But, on other occasions, most of those very same leaders are urging their followers to engage in homosexual child-molesting. For example, Gregory Battcock, writing in the May 10th, 1971 issue of the homosexual newspaper GAY, stated: "I'd always thought that one of the reasons one bothered to be homosexual in the first place was that you could be promiscuous and a child-molester without anyone so much as raising an eyebrow. After all, both were perfectly acceptable conventions—otherwise why be homosexual? Certainly not to ape straight behavior and accept the strangulations and repressions contained therein!" On another occasion, the homosexual newspaper GAY, in its issue of March 20, 1972, reported on a convention of homosexual organizations from all over the nation. This convention was co-hosted by the New York Gay Activists Alliance. This convention drew up a political platform which included planks demanding: "Repeal of all laws prohibiting private sexual acts involving consenting persons. Repeal of all laws governing the age of sexual consent. Federal encouragement and support for sex education courses prepared and taught by qualified Gay women and men presenting Homosexuality as a valid healthy preference and life-style, and as a viable alternative to heterosexuality." In other words, a convention of homosexuals from all over the nation demands that the government help them in their efforts to persuade your children to commit sodomy with them.

Then, on February 8, 1973, the VILLAGE VOICE, a local newspaper, reported on a vast market, centered in Times Square, New York City, in which older men were taking advantage of the poverty and ignorance of boys as young as eleven years of age, by paying those boys to have sex with them. The next week's issue of the same paper carried a letter-to-the-editor

by Morty Manford, President of the N.Y. Gay Activists Alliance. In that letter Manford said that he saw nothing wrong with the idea of older men having sex with boys that young.

There are even organizations for homosexual child-molesters. There is the Gay Pedophile Liberation Front and the Church of Greek Love in Philadelphia, Pa. There is also an organization, called "Better Life", which advertises in The ADVOCATE, the nation's largest-selling and most influential homosexual publication. "Better Life" advertises its "newsletter for pedophiles only". Also, The ADVOCATE, in its issue of December 19, 1973, reported on the "Second International Congress on Pedophilia (boy love)" held in Holland. The ADVOCATE article relates that one of the organizers "termed the Nov. 11 meeting a considerable success and said it appears that these twice-yearly meetings of Dutch pedophiles with guests from other countries can become a permanent arrangement."

There are many more examples of this sort, which cannot be set out here because of space limitations. And yet, in spite of all these facts, homosexual spokesmen claim that a homosexual selected at random is less likely to be a child-molester than a heterosexual selected at random!

There is another reason why the bill under discussion should not be passed. The bill is supposed to be an anti-discrimination, civil-rights bill. Actually, the bill was schemed up by the homosexuals of the N.Y. Gay Activists Alliance and presented to their stooges in the N.Y. City Council. The bill was deliberately designed to favor homosexuals over all other sexual minorities and, in fact, even over the majority of normal people. The bill protects homosexuals from discrimination, but does not protect a person from discrimination based on marital status. Thus a homosexual employer could specify that he wants to hire only single people, while a married employer could not specify that he wants to hire only non-homosexual people. Reverend Louis R. Gigante, a member of the N.Y. City Council and one of the stooges of the N.Y. Gay Activists Alliance, has vilified those of his fellow Councilmen who oppose the bill, by calling them "bigots". But the holy Reverend has yet to explain why he considers homosexuals to be so noble and sacred that they should be glorified and exalted above other people.

The Councilmen named at the beginning of this message sold out to the organized homosexual movement of America in order to further their political careers by obtaining the continuing editorial support of The New York Times. The Times has a blatant, pro-homosexual editorial bias. For example, on July 3 and July 10 of 1966, The Times published advertisements for the book: GREEK LOVE. This book exhorts and encourages homosexual child-molesters to commit sodomy on young boys and instructs them on how to get away with it.

The advertisements themselves specifically recommend sex between men and young boys and are thus incitements to lawbreaking. Furthermore, the Long Island Press, in its issue of May 23, 1962, reports the arrest of members of an international club devoted to sodomy between men and young boys. That club even went so far as to publish a newsletter. The contents of that newsletter were apparently

derived, in part, from the book: GREEK LOVE. Therefore not only has The Times published advertisements inciting to crime, but crime has apparently been committed, incited by advertisements in The Times. On the other hand, The Times refuses to print any ad criticizing homosexuality, because the homosexuals who control The Times consider such an ad to be "offensive to good taste."

However, The New York Times is more than willing to publish ads attacking other groups. For example, on February 14, 1972, The Times published a vicious racist advertisement, advocating that Blacks should be held down in a position of inferiority. On June 6, 1972, The Times published another racist advertisement (this one a full-page diatribe against Jews, stating, in part, that the Jews of the United States form "a potent Fifth Column"). But The Times will not publish an ad attacking homosexuals, because the homosexuals who control The Times believe that homosexuals are superior to everyone else. That is also why The Times has published editorials in behalf of the bill under discussion.

On March 9, 1973, The New York Times published an editorial masquerading as a news story in which it was stated that one of the worst things a woman can do is become a prostitute, and that all women prostitutes should be imprisoned for their own good. Then, on March 20, 1973, The Times published another editorial masquerading as a news story in which it was stated that becoming a male homosexual prostitute is sometimes a good thing for a fourteen-year-old boy and can lead to a good future for such boys. The reason The Times published these editorials is that the homosexuals who control The Times would like to see all the women prostitutes driven out of New York City and replaced with teenage boy homosexual prostitutes. As a matter of fact, under the editorial urging of The Times, the New York City police have been engaging in a deliberately discriminatory policy of law enforcement. The police have gone all-out in their efforts to entrap and arrest women prostitutes and their clients. At the same time the police have done nothing to impede homosexual prostitution involving boys as young as sixteen, and have made only token efforts to impede homosexual prostitution involving boys younger than sixteen. This is one of the reasons homosexuals have been flocking to New York City in recent years. If the bill under discussion is passed, the number of homosexuals flocking to New York City will increase even more.

Jeanne Corlewa, a lesbian leader, is quoted in the July 17, 1974 issue of The ADVOCATE as stating: "I predict homosexuality will be the life-style of the future". Homosexuality will indeed become the life style of the future if bills such as the one under discussion are enacted into law. Therefore, for your children's sake and your own sake, see to it that the N.Y. Gay Activists Alliance's stooges in the N.Y. City Council are defeated in their bids for re-election.

This card has been written, published, and mailed by:

Fred Cherry
Post Office Box 1017
Brooklyn, N.Y. 11202

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
FRED CHERRY and
ALAN CHARMATZ,

Plaintiffs,

- against -

THE POSTMASTER-GENERAL OF
THE UNITED STATES,

Defendant.

ANSWER

Civil Action
No. 76 C 1485

----- X
Defendant, Postmaster-General of the United States, by its attorney, DAVID G. TRAGER, United States Attorney for the Eastern District of New York, Leonard A. Sciafani, Assistant United States Attorney of counsel, answering the complaint of plaintiffs:

1. Neither admits nor denies the truth of the allegations contained in the paragraph labeled "1" of plaintiffs' complaint herein which present questions of law not requiring an answer and which are respectfully referred to the Court, except lacks knowledge or information sufficient to form a belief as to the truth of the allegation that the matter in controversy exceeds the sum or value of Twenty (\$20) dollars, exclusive of interest and costs.

Second: With respect to the allegations, contained in the paragraph labeled "2" of plaintiffs' complaint herein, lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiffs' purposes for commencing this action; asserts that neither Congress nor the United States Postal Service has committed or suffered to be committed any acts

repugnant to the Constitution of the United States in connection with any of the subject matter of this action; and further asserts that this action does not involve a substantial Constitutional question and that accordingly it would be inappropriate to convene a three-judge court.

THIRD: Admits the truth of the allegations contained in the paragraph labeled "3" of the plaintiffs' complaint herein.

FOURTH: Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the subparagraphs labeled 4(a) and (b) of the plaintiffs' complaint herein.

FIFTH: With respect to the allegations contained in the subparagraphs labeled 4(c) and (d) of plaintiffs' complaint herein, lacks knowledge or information sufficient to form a belief or to the truth of the allegations that plaintiff has attempted to mail any post cards recently; admits that plaintiff did attempt to mail one post card from the General Post Office, Brooklyn, New York in 1974; one post card from the Church Street Post Office, New York, New York in 1975 and two post cards from the Old San Juan Post Office, San Juan, Puerto Rico, one in 1975 and one in 1976; further asserts that Exhibit "A" of plaintiffs' complaint herein is not a true copy of the post cards which are above described, and otherwise denies the truth of each and every allegation.

SIXTH: With respect to the allegations contained in the subparagraphs labeled 5(a) (d) (e) and (f) of the plaintiffs' complaint herein, asserts that the allegations contain no statements of fact but merely contain conclusions and opinions held by plaintiff.

Accordingly, the allegations require no response.

SEVENTH: Denies the truth of the allegations contained in the subparagraph labeled 5(c) of the plaintiffs' complaint herein.

EIGHTH: Lacks knowledge or information sufficient to form belief as to the truth of the allegations contained in the subparagraph labeled 5(b) of the plaintiffs' complaint herein.

NINTH: Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph labeled "6" of the plaintiffs' complaint herein.

TENTH: Admits the truth of the allegations contained in the subparagraph labeled 7(a) of the plaintiffs' complaint herein.

ELEVENTH: Denies the truth of the allegations contained in the subparagraphs labeled 7(b) (c) (d) and (e) of the plaintiffs' complaint herein; asserts that the action referred to by plaintiffs in subparagraph 7(a) of their complaint herein was dismissed by the United States District Court for the Southern District of New York on the grounds of mootness holding that no statute, order, or regulation of the United States Postal Service prohibited the mailing and delivery of certain post cards of the plaintiff Cherry; further asserts that the information contained on the post cards, the subject of the action referred to in subparagraph 7(a) of plaintiffs' complaint herein is substantially different from the material contained on the post cards which are the subject of the within action and admits that on no more than four isolated

✓ cards of plaintiff Cherry have been returned to him by the United States Postal Service for various reasons. Plaintiff Cherry's own conduct and representations were the cause of the return of the said post cards.

TWELFTH: Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the subparagraph labeled 8(a) of plaintiffs' complaint herein.

THIRTEENTH: Denies the truth of each and all of the allegations contained in the subparagraph labeled 8(b) of the plaintiffs' complaint herein.

FOURTEENTH: Lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the subparagraphs labeled 9(a) and (b) of plaintiffs' complaint herein.

FIFTEENTH: With respect to the allegations contained in the subparagraphs labeled 10(a) and (b) of the plaintiffs' complaint herein, asserts that while plaintiffs refer in these allegations to the policy of the Postal Service with respect to the mailability of newspapers and magazines with "certain material" exposed thereon, plaintiffs do not, in the said complaint, identify, define or describe what they mean by the term "certain material". Moreover these allegations are not statements of fact, are hypothetical in nature and state only conclusions and opinions of the plaintiffs herein. Accordingly, the said allegations require no response.

SIXTEENTH: Denies the truth of any and all of the allegations contained in the paragraphs labeled "11 and 12" of plaintiff complaint herein.

SEVENTEENTH: Otherwise denies each and all of the allegations contained in the complaint to the extent that they are not specifically admitted or denied herein.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

EIGHTEENTH: The complaint herein fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

NINETEENTH: This court lacks jurisdiction to convene a three-judge court in the action.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

TWENTIETH: Plaintiff in his complaint herein presents no substantial issues of Constitutional law and as such it would be inappropriate to convene a three-judge court in this action.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

TWENTY FIRST: Any post cards refused for mailing by the Postal Service were refused as a direct and proximate result of plaintiffs' own conduct, actions and representations to the Postal Service.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

TWENTY SECOND: Plaintiffs' claims are barred by the Doctrine of Laches.

AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE

TWENTY THIRD: Plaintiffs' claims are moot by reason of the fact that the defendant does not deny the mailability under Title 18, United States Code, Section 1718, of any post cards of plaintiffs, otherwise mailable, which contains the material appearing in Exhibit "A" of plaintiffs' complaint herein.

WHEREFORE, the defendant, the Postmaster General of the United States, respectfully demands judgment in its favor dismissing the complaint herein and for such other and further relief as to the Court seems just and proper.

Dated: Brooklyn, New York
November 11, 1976

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

By: _____
LEONARD A. SCLAFANI
Assistant U.S. Attorney

**DEFENDANT'S RESPONSES TO PLAINTIFF'S
INTERROGATORIES DATED DECEMBER 22, 1976**

NOTE: For purposes of these responses, and consistent with Postal Service usage, the following definitions will apply:

- a. RETURNED - applies to matter which has been accepted into the mailstream but is subsequently sent back to the mailer.
- b. REJECTED - applies to matter offered for mailing which is not accepted, but is handed back to the person presenting it.

Interrogatory

1. State the name, job title, civil service (GS) grade, and address of employment of the individual answering these interrogatories.

Response

1. The responses to Interrogatories Nos. 1 through 3 are made herein by Postal Inspector Raphael P. Lombardi, PES level 23, New York Division, 90 Church Street, New York, NY 10008. The responses to Interrogatories Nos. 4 through 7 are made herein by Postal Inspector Julian A. Sherman, PES level 24, Office of Security, Legal Liaison Branch, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

Interrogatory

2. With respect to paragraph ELEVENTH of the answer to the complaint in this action, for each of the four instances set forth in said paragraph, set forth in detail the representations and the conduct which it is contended caused the return of the post cards to the plaintiff Fred Cherry.

Response

2. It is not the usual practice in the Postal Service to make or keep written records of incidents in which articles presented for mailing are rejected. Therefore, it is not possible to identify each such transaction involving the Plaintiff; however, it is believed that approximately four such rejections took place at San Juan, Puerto Rico during 1975 - 1976, and one occurred at Church Street Station, New York, NY two years ago. In each of these transactions, Plaintiff insisted that the cards he presented be sent as registered mail. At San Juan, registration was refused on the ground that the cards could not be "sealed" as required in 161.32, Postal Service Manual. That was a discretionary judgment, made in good faith but erroneously. Cards, as a form of first-class matter, are acceptable for registration as stated in 161.12, Postal Service Manual. At Church Street Station, Plaintiff's own representations to the registry window clerk, to the effect that the message on the card which he presented violated the postal regulations, and the clerk's reading of that message, resulted in the clerk's decision to reject the card.

Interrogatory

3. With respect to a postcard mailed from the General Post Office in Brooklyn by the plaintiff Fred Cherry by registered mail (#13053) on August 19, 1974, state the name, job title, civil service (GS) grade, and address of employment of each employee of the Postal Service who had actual physical possession and control of said postcard. In addition, indicate the dates each such employee had actual physical possession and control of said post card and the locations, with dates, at which said postcard was kept.

Response

3. Registry records are retained two years. Files of complaints and inquiries concerning registered mail are retained one year. It is therefore not possible to identify every postal employee who had possession of, or access to, Registered Article Number 13053. However, it has been established that Jerome Dreizen, Mailing Requirements Clerk, PS-7, New York, NY, transmitted the article on August 27, 1974 to the Postal Inspector in Charge, New York, NY; and that Bernice Rosalinsky, Stenographer Occupational Field, PTAC-12, General Post Office, New York, NY, transmitted it to the Postal Inspector in Charge, Newark, NJ, on September 4, 1974. The identity of the employee who had possession of it at the office of the Inspector in Charge at Newark is not known. It was transmitted on October 24, 1974 to Postal Inspector S. L. Sztanko, PES-21, then stationed at the General Post Office, Brooklyn, NY (now at 90 Church Street, New York, NY). Inspector Sztanko turned over Register No. 13053 to Cecilia Barrett, Customer Service Complaints Officer, PSM-15, General Post Office, Brooklyn, NY, on November 19, 1974. A letter was written by the Postmaster, Brooklyn, NY, on December 11, 1974, apologizing for the mishandling of the card and assuring the Plaintiff that suitable instructions had been issued to postal employees concerned, to prevent a recurrence.

Interrogatory

4(a) In addition to certain sections of the Postal Service Manual, are there any manuals, circulars, or other forms of written or printed instructions directed specifically to employees of the Postal Inspection Service?

(b) If so, give a general description of the form of said written or printed instructions, and the designation by which these instructions are referred to by Postal Service employees.

(c) In addition, do said written or printed instructions contain any reference, either direct or indirect, to 18 U.S.C. 1718, or former section 123.45 of the Postal Service Manual, or present section 123.44f of the Postal Service Manual?

Response

4(a) Yes.

(b) i. The Confidential Field Manual

ii. The Confidential Management Manual

Each of the manuals consists physically of a ring-binder containing printed sheets 8" x 10½", designed for easy revision or replacement.

(c) Yes.

Interrogatory

5. Since July 30, 1971, how many pieces of mail have been seized or detained or withheld from delivery on the grounds of possible violation of 18 U.S.C. 1718, or former section 123.45 of the Postal Service Manual, or present section 123.44f of the Postal Service Manual?

Response

5. The number is unknown and is not ascertainable.

Interrogatory

6. Since July 30, 1971, how many people have been informed by any employee of the Postal Service that their mailings may violate 18 U.S.C. 1718?

Response

6. The number is unknown and is not ascertainable.

Interrogatory

7. Since July 30, 1971, how many reports have been made by any Postal Service Employee to any employee of the United States Department of Justice regarding any possible violation of 18 U.S.C. 1718?

Response

7. The number is unknown and is not ascertainable.

MOTION & NOTICE OF MOTION
TO CONVENE A THREE-JUDGE COURT
PURSUANT TO 28 U.S.C. 2282-2284

To: Elaine C. Buck, Attorney for Defendant:

PLEASE TAKE NOTICE that upon the attached affidavits and upon all previous pleadings and proceedings herein, the undersigned will move this court at Courtroom One, United States Courthouse, 225 Cadman Plaza East, at 10:00 A.M. on the forenoon of July 28, 1977 (C.E.), for the convening of a three-judge court in conformity with 28 U.S.C. 2282 and 28 U.S.C. 2284, for the reason that plaintiff seeks to restrain the enforcement and execution of 18 U.S.C. 1718 and 39 U.S.C. 3001 for repugnance to the Constitution of the United States.

Fred Cherry

FRED CHERRY
Plaintiff, pro se
Post Office Address
Post Office Box 1017
Brooklyn, N.Y. 11202

AFFIDAVIT OF JULIUS C. TORTORICE

State of New York }
County of Kings } ss

Julius C. Tortorice, being duly sworn, deposes and says:

1. I am personally acquainted with both of the plaintiffs in this action.

2. I presently reside at Block 33, # 33, Calle 27, Santa Rosa, Bayamon, Puerto Rico 00619.

3. I formerly resided at 7 Bancroft Avenue, Staten Island, New York 10306.

4. I am a retired employee of the City of New York. When I worked for the City of New York, I was employed in the capacity of Assistant Civil Engineer in the office of the President of the Borough of Brooklyn.

5. On March 3, 1976, Mr. Fred Cherry showed me a copy of a post card whose message is an exact replica of Exhibit "A" which is attached to the complaint in this action. Mr. Cherry has also shown me a copy of said complaint. Mr. Cherry informed me that he intended to attempt to mail said post card by registered mail. He asked me to accompany him to the General Post Office in Hato Rey, San Juan, Puerto Rico. I did so.

6. At the General Post Office I observed that one clerk refused to accept Mr. Cherry's post card for mailing, and referred Mr. Cherry to another section.

7. I next observed that Mr. Cherry took up the matter with a Postal employee who identified himself as Mr. Carceres. I heard Mr. Carceres inform Mr. Cherry that he (Mr. Carceres) would have to consult other officials in the Post Office. I then observed that Mr. Carceres left the area open to public view for about twenty minutes, taking Mr. Cherry's post card with him. I next observed Mr. Carceres return with the post card in question and heard Mr. Carceres inform Mr. Cherry that the post card could not be accepted for mailing.

8. I then heard Mr. Cherry ask Mr. Carceres the reason that the post card could not be accepted for mailing. I heard Mr. Carceres tell Mr. Cherry that he (Mr. Carceres) had been informed by other officials in the Post Office that the wording on the post card made the post card nonmailable.

AFFIDAVIT OF FRED CHERRY

State of New York }
County of Kings } ss

Fred Cherry, being duly sworn, deposes and says:

1. In the summer of 1974 I had one thousand postcards printed. The printed message side of said postcards is identical to "Exhibit A", on page 6 of the Complaint.

2. Some of said postcards were mailed to personal acquaintances of mine. Some of said acquaintances informed me that they had not received said postcards.

3. In an effort to determine if the postcards which I was mailing were being withheld from delivery, I sent six of said postcards by registered mail, return receipt requested, during the summer of 1974.

4. I did not receive the return receipt for one of these postcards (Registered Article No. 13053). I made repeated inquiries for approximately six weeks during which time the Postal Service refused to respond to said inquiries. Finally I made a request to examine the relevant records, pursuant to the Freedom of Information Act. Soon after making said Freedom of Information Act request, the postcard in question was returned to me. No explanation was given to me at that time, nor was I ever permitted to examine the records I had requested to examine pursuant to the Freedom of Information Act.

5. During February of 1975, while residing in Puerto Rico, I mailed two of the postcards referred to in Paragraph # 1, supra, by ordinary (non-registered) mail, to two personal acquaintances residing in Puerto Rico. Said acquaintances informed me that they did not receive said postcards.

6. During March of 1975, I attempted to mail some of said postcards by registered mail at the General Post Office in Hato Rey, Puerto Rico. On that occasion I was informed that postcards could not be sent by registered mail.

7. On March 24, 1975, I wrote to the "Consumer Advocate" of the Postal Service in Washington, D.C., inquiring whether or not postcards could be sent by registered mail. On May 1, 1975, I received a reply to said letter, -informing me that postcards could be sent by registered mail. A true copy of said reply from the Office of the "Consumer Advocate" is hereto attached as "Exhibit A".

8. On May 1, 1975, I returned to the General Post Office in Hato Rey, Puerto Rico, and once again attempted to mail some of said postcards by registered mail. I spoke to a person who identified himself as Ignacio Padilla. I gave Mr. Padilla a copy of "Exhibit A". Mr. Padilla told me he would have to refer the question of mailability to someone else. He left the area visible to the public for approximately fifteen minutes, taking said postcards with him. Upon returning, he informed me that said

postcards were nonmailable because of the "footnotes" they contained. I believe the term "footnotes" referred to comments which I had added in freehand at the bottom of said postcards, commenting unfavorably on the actions of various postal officials.

9. On May 5, 1975, I attempted to mail four of said postcards from the Old San Juan Post Office. Mr William Rivera, Acting Manager, informed me that said postcards were nonmailable. I pointed out to Mr. Rivera that the Postal Service Manual, in Section 123.32, provides that only the Postal Inspection Service may make determinations of nonmailability, when questions of "written, printed, or graphic matter" are involved. Mr. Rivera then accepted the postcards for mailing, and informed me that they would first be referred to the Postal Inspection Service before being dispatched.

10. On May 12, 1975, said four postcards were returned to me by registered mail, together with a letter from Mr. Rivera. "Exhibit B", hereto attached, is a true copy of Mr. Rivera's letter.

11. On May 12, 1975, I phoned the General Post Office in Hato Rey, Puerto Rico, and spoke to Mr. Llitas, Superintendent of Mails. I told Mr. Llitas that the reasons given on Mr. Rivera's letter for the return of my postcards were hoaxes and that the actual reason for the return of my cards was that my cards were deemed to be in violation of 18 U.S.C. 1718. I also told Mr. Llitas that Postal officials had agreed not to interfere with my postcards. I asked for a letter of explanation. Mr. Llitas agreed to see me the next day.

12. On May 13, 1975, I spoke to Mr. Lliteras in his office. Mr. Lliteras called Postal Inspector Wilson into his (Mr. Lliteras') office. Postal Inspector Wilson told us that my postcards were in violation of Section 123.44f of the Postal Service Manual. He also ordered Mr. Lliteras not to give me a letter to that effect. He did, however, give me a copy of that page of the Postal Service Manual which contains Section 123.44f. "Exhibit C", hereto attached, is a true copy of the copy Postal Inspector Wilson gave me.

13. During the winter of 1971-1972, Postal Inspector Wilson threatened to arrest me for mailing copies of the postcards which were the subject of the case of Cherry v. Postmaster-General, reported at 332 F. Supp. 785. Wilson also seized and withheld some of said postcards for approximately six weeks. In the late spring of 1972 I was told by Gerald A. Rosenberg, Esq., Assistant U.S. Attorney, that Postal Inspector Wilson had been instructed to stop interfering with my postcards.

14. On May 14, 1975, I returned to the General Post Office in Hato Rey, Puerto Rico, and attempted to appeal Postal Inspector Wilson's determination of nonmailability. I spoke to Mr. Rodriguez, Assistant to Regional Director Miguel Cintron. I showed Mr. Rodriguez a copy of the opinion of the case of Cherry v. Postmaster-General, reported at 332 F. Supp. 785. I explained to Mr. Rodriguez that the Assistant U.S. Attorney in charge of that case had sworn that the Postal Service had no authority to withhold my postcards from delivery. Mr. Rodriguez told me that he could not overrule Postal Inspector Wilson's determination of nonmailability. I asked to speak to the Regional Director, Mr.

Rodriguez went into the Regional Director's office, remained there for approximately ten minutes, then informed me that the Regional Director was "too busy" to see me. I was the only one in the public area of the anteroom to the Regional Director's office at that time.

15. On June 20, 1975, I attempted to mail one of the postcards which is the subject of the present action, by registered mail from the Church Street Post Office in Manhattan. I asked the employee at the registry window whether or not my postcard violated Section 123.44f of the Postal Service Manual. He left the window for approximately fifteen minutes, taking the postcard with him. When he returned, he informed me that he had been instructed by one of his superiors to refuse to accept my postcard for mailing.

16. On November 25, 1975, I wrote to the Docket Clerk of the Postal Service, attempting to obtain an administrative appeal from Postal Inspector Wilson's determination of nonmailability. "Exhibit D", hereto attached, is a true copy of said letter.

17. Approximately ten days later I received a response to said letter. "Exhibit E", hereto attached, is a true copy of said response. I never received any further communication in regard to said administrative appeal.

18. On March 3, 1976, I again returned to the General Post Office in Hato Rey, Puerto Rico. I again attempted to mail one of my postcards by registered mail.

19. After being refused at one of the windows, I was referred to a person who identified himself as Mr. Carceres. Mr.

Carceres informed me that he would have to consult with other officials. He left the area visible to the public, taking the postcard with him. After more than fifteen minutes he returned and informed me that the postcard could not be accepted for mailing. I asked him why and he informed me that the wording on the postcard was the reason it was refused for mailing.

20. On December 8, 1976, I attempted to mail one of my postcards by registered mail from the post office located at 1300 Washington Avenue, Miami Beach, Florida. The clerk at the registry window asked me the purpose of mailing a postcard by registered mail. I told him that this was the only way I could find out if the Postal Service was enforcing Section 123.44f of the Postal Service Manual. He then left with the postcard as was gone for almost thirty minutes. He returned, accompanied by another man who identified himself as R.E. Cedola, Manager. Mr. Cedola told me that my postcard was unacceptable. I asked him why. He refused to tell me. I then asked him if my postcard could be sent by certified mail. At this point Mr. Cedola became angry and abusive and shouted at me to get out of his post office.

Brooklyn, New York, July 13-14, 1977 (C.E.)



CONSUMER ADVOCATE

Washington, D.C. 20260

April 28, 1975

Dear Mr. Cherry:

Thomas W. Chadwick, who has succeeded David Ordway as Consumer Advocate, has asked me to respond to your letter of March 24, 1975.

From the information provided in your letter, it appears that the postcards in question may, in fact, be sent by registered mail. There may, however, be an additional postage charge for the outsized postcards, in keeping with section 131.222 of the Postal Service Manual. For any additional information, I suggest that you again contact the Mailing Requirements Office of the San Juan Post Office.

Thank you very much for writing. I am enclosing a copy of our pamphlet, "A Consumer's Guide to Postal Services to Products", which may be of interest to you.

Sincerely yours,

Margaret M. Brobson
Consumer Affairs Associate
(202) 245-4543

Mr. Fred Cherry
603 Miramar Avenue
Santurce, PR 00907

Enclosure

UNITED STATES POST OFFICE
San Juan, P. R. 00902

IN REPLY REFER TO

May 9, 1975

Mr. Fred Cherry
603 Miramar Ave.
Santurce, P. R. 00907

Dear Sir:

According to Sections 131.222 and 161.32 of the Postal Manual the enclosed Registered mail # 38528, 29, 30 and 31, oversized cards, are unavailable.

If you desire any additional information please refer to Mail Requirement Office at the General Post Office in San Juan, P. R. 00936, as instructed in the letter from Consumer Advocate.

You are entitled to a refund for the amount of postage pasted to the cards.

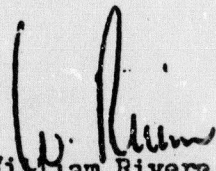

William Rivera
Acting Manager
Old San Juan Station
San Juan, P. R. 00905

EXHIBIT "B"

- d. **Lewd or Filthy Matter** (18 U.S.C. 1461, 1462). Obscene, lewd, lascivious, or filthy publications or writings, or mail containing information concerning where, how, or from whom such matter may be obtained, and matter which is otherwise mailable but which has on its wrapper or envelope any indecent, lewd, lascivious, or obscene writing or printing. Any mail containing any filthy, vile, or indecent thing.
- e. **Matter Inciting to Violence** (18 U.S.C. 1461, 1717). Any matter of a character tending to incite arson, murder, assassination, treason, insurrection, or forcible resistance to any law of the United States, or containing any threat to take the life of, or to inflict harm upon, the President of the United States.
- f. **Libelous Matter** (18 U.S.C. 1718). Any matter otherwise mailable which has on its outside wrapper or envelope or any postal card which bears on its face, any libelous, scurrilous, defamatory or threatening language or delineation, or is otherwise obviously intended to reflect injuriously on the character or conduct of another.
- g. **Other Matter** (18 U.S.C. 1717). Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter or thing, described in the statutes hereinafter referenced:
- (1) Forged or altered military or official passes (18 U.S.C. 499);
 - (2) Matter bearing forged or altered seals of Government departments or agencies (18 U.S.C. 506);
 - (3) Defense information (18 U.S.C. 793, 794);
 - (4) Documents obtained by persons falsely assuming to be foreign diplomats (18 U.S.C. 915);
 - (5) False statements influencing foreign governments (18 U.S.C. 954);
 - (6) Matter relating to a conspiracy to injure property of a foreign government (18 U.S.C. 956);
 - (7) Matter unlawfully in aid of a foreign government (18 U.S.C. 957);
 - (8) Matter relating to an expedition against a friendly nation (18 U.S.C. 960);
 - (9) Matter relating to delivery of an armed vessel to a belligerent nation (18 U.S.C. 964);
 - (10) Matter wrongfully bearing the seal of a Government department or agency (18 U.S.C. 1017);
 - (11) Passport applications containing false statements, and passports falsely obtained (18 U.S.C. 1542);
 - (12) Forged, altered or misused passports (18 U.S.C. 1543, 1544);
 - (13) Matter bearing false statements intended to injure armed forces during war (18 U.S.C. 2388).

123.5 SEXUALLY ORIENTED ADVERTISEMENTS

.51 GENERAL

.511 Section 3010 of title 39, United States Code, provides a means by which a member of the public can act to protect himself and his minor children from receiving unsolicited sexually oriented advertisements through the mails. This section permits any person who is served by the U.S. Postal Service to file with the Postal Service a statement that he does not desire to receive any sexually oriented advertisements through the mails. Any mailer who sends that person an unsolicited sexually oriented advertisement more than 30 days after the date on which the Postal Service adds his name to its reference list of those who desire this protection, may be subject to both civil and criminal sanctions, as provided in 39 U.S.C. 3011 and in 18 U.S.C. 1735-37.

EXHIBIT "C"

November 25, 1975

Docket Clerk
U.S. Postal Service
Washington, D.C. 20260

Dear Sir,

Pursuant to Section 123.37 of the Postal Service Manual (also 39 C.F.R. 123.3(g); 39 F.R. 19959), I hereby appeal the determination that certain postcards of mine are nonmailable under Section 123.44f of the Postal Manual.

On May 5, 1975, I mailed four postcards by registered mail from the Old San Juan (Puerto Rico) Station. These cards were returned to me on the pretext that they violated Sections 131.222 and 161.32 of the Postal Manual. Since I had previously obtained a ruling from the Consumer Advocate's Office that Section 161.32 did not apply to postcards, and since I had paid full first-class postage, thus complying with Section 131.222, I went to the General San Juan Post Office on May 13, 1975, and spoke to the Superintendent of Mail. He consulted with Postal Inspector Wilson. Wilson then made the determination that my postcards violated Section 123.44f of the Postal Manual. I requested a written notification to this effect, but Inspector Wilson ordered the Superintendent of Mails not to give me such written notification.

On May 14, 1975, I returned to the General San Juan Post Office and attempted to appeal Postal Inspector Wilson's determination of nonmailability to the Regional Director. The Assistant to the Regional Director spoke to me and informed me that he could not overrule Inspector Wilson's determination of nonmailability. I then asked to speak to the Regional Director. The Assistant to the Regional Director went into the Regional Director's office, remained there for approximately ten minutes, then informed me that the Regional Director was "too busy" to see me.

I am requesting that a hearing on this matter be held in the Metropolitan San Juan area, since all the witnesses reside in this area. Attached hereto are copies of the four postcards in question.

Yours truly,

Fred Cherry
Fred Cherry
603 Miramar Avenue
Santurce, Puerto Rico 00907

December 3, 1975

Letter from Fred Cherry concerning the return to him, as nonmailable, certain material he deposited in the mail.

The General Counsel

Transmitted herewith are a letter and attachments from Fred Cherry, 603 Miramar Avenue, Santurce, Puerto Rico, in which he seeks to appeal a ruling by postal officials in San Juan that certain material mailed by him is nonmailable under the provisions of §123.44(f) of the Postal Service Manual.

It appears that to docket this matter now would be premature, since there is no showing that you have had an opportunity to examine the material being mailed by Mr. Cherry and take either of the courses of action indicated in §953.3 of the Rules of Practice in Proceedings Relative to Mailability.

Please advise me as to any action you take in regard to this matter.

(Signed) William A. Duvall
William A. Duvall
Chief Administrative Law Judge

cc: Fred Cherry
603 Miramar Avenue
Santurce, Puerto Rico 00907

RESPONSE ON BEHALF OF DEFENDANT POSTMASTER GENERAL
TO PLAINTIFF FRED CHERRY'S REQUEST FOR PRODUCTION
OF DOCUMENTS, DATED JUNE 21, 1977

Plaintiff Cherry requested a copy of the instructions issued to postal employees together with a list of the employees to whom said instructions were issued. The instructions referred to are those set forth in "Response 3" to plaintiff's first set of interrogatories.

Response:

Copies of the "instructions issued to postal employees," and information as to issuance of those instructions, are being furnished to plaintiffs Cherry and Charmatz in response to Interrogatory No. 1 of the interrogatories dated June 28, 1977.

Plaintiff Cherry also requested a copy of the Confidential Field Manual and a copy of the Confidential Management Manual. The manuals referred to are those set forth in "Response 4(b)" to plaintiff's first set of interrogatories.

Response:

One page in the Confidential Field Manual, and one page in the Confidential Management Manual, both of them identified as Part II, Chapter 5, Section 12, relate to investigation of alleged violations of title 18, section 1718, United States Code, and enforcement of that statute. Copies of those two pages are attached to this response as Exhibits "A" and "B."

Defendant objects to production of any other parts of either Manual, on the ground that the contents thereof are not relevant to the issues in this lawsuit.

This response was prepared on July 28, 1977 by:

Confidential Field Manual

12.1 INTRODUCTION. Scurrilous and defamatory/objectionable mailings often involve material which does not violate federal law, or is not considered suitable for federal prosecution, but does cause the recipient concern. Domestic quarrels, business disagreements, neighborhood animosities, and personal eccentricities appear to be the most common motives for these mailings. Local police officials are often well acquainted with the disputes involved and, in most instances, these matters are best resolved through local action.

12.2 LIPELOUS MATTER ON WRAPPERS OR ENVELOPES. Title 18 U.S.C. 1718 provides that all mail with libelous matter on the outside is ~~unavailable~~. Investigation of this type violation also includes the mailing of dunning postal cards. Two federal courts in Tollett v. United States, 465 F. 2d 1087 (8th Cir. 1973) and United States v. Handler, 383 F. Supp. 1267 (U.S.D.C. D. of MD 1974), have declared the statute unconstitutional. However, the Department of Justice still considers 18 U.S.C. 1718 a viable statute with preferable application to "dunning" or similar "harassment-for-profit" situations.

12.3 COMPLAINT HANDLING PROCEDURE. Complaints indicating possible violation of 18 U.S.C. 1718; 18 U.S.C. 1461 (noncommercial obscenity dealer) and 18 U.S.C. 1463, should be brought to the attention of Division Headquarters for a determination as to whether a case is warranted. Those which obviously are not in violation of postal laws may be returned to the

customer with a suitable explanation, unless unusual circumstances or direction from the Inspector in Charge dictates otherwise. Complaints reflecting threats to kidnap or cause bodily harm to persons or to damage property should be referred to the FBI (II-1-12.7 and II-5-8 Confidential Field Manual).

12.4 INVESTIGATIVE SUGGESTIONS. In some instances it may be advantageous to confront the alleged violator for the purpose of having the mailings discontinued. When this approach is taken, caution should be exercised not to imply that the Postal Service attempts to censor mail or infringe upon the constitutional guarantee for freedom of expression.

12.41 In view of the sensitive nature of these investigations, employers of suspected violators should not be contacted.

12.5 PRESENTATION TO USA. Evidence of criminal violations should be presented in writing to the United States Attorney. If prosecution is declined, the complainant should be politely informed of that decision. It may be suggested that the complainant refer the matter to local authorities or seek civil remedies. Inspectors may assist State authorities in ensuing criminal actions.

12.6 REPORTS.

12.61 CASE REPORTS.

"E" cases issued in conformity with these instructions will be reported in accordance with Part II, Chapter 5, Section 1, Confidential Field Manual.

Reprint #5
March 1977

1 Sheet

CHERRY & CHARMATZ v. PM GENERAL
USDC, ED NY - No. 76 Civ. 1485

Defendant's Response to Plaintiffs'
Request to Produce Documents dated
June 21, 1977

EXHIBIT

Confidential Management Manual

12.1 INTRODUCTION. Field operating instructions are contained in 11-5-1: CFM.

12.2 CASE JACKETING. Scurrilous and defamatory/*objectionable* mailings should be made the subject of an investigation only after a discerning evaluation of the complaint. Subject Codes 383 and 363 "E" cases should be issued for investigative attention as warranted.

12.3 REPORTS.

12.31 PRESENTATION LETTERS.

Two copies of presentation letters should be sent to National Headquarters.

12.32 QUARTERLY SUMMARY REPORT.

Divisions and Regions shall comment in their quarterly narrative summary report on all significant matters involving scurrilous and defamatory/*objectionable* mail investigations.

CHERRY & CHARMATZ v. PM GENERAL
USDC, ED NY - No. 76 Civ. 1485

Defendant's Response to Plaintiffs'
Request to Produce Documents dated
June 21, 1977

EXHIBIT

B

B

RESPONSES MADE ON BEHALF OF POSTMASTER
GENERAL BENJAMIN F. BAILAR TO PLAINTIFFS'
INTERROGATORIES DATED JUNE 28, 1977

Interrogatory

1. In "Response 3" of "Defendant's Responses to Plaintiff's Interrogatories Dated December 22, 1976," it is stated that: "A letter was written by the Postmaster, Brooklyn, NY, on December 11, 1974, apologizing for the mishandling of the card and assuring the Plaintiff that suitable instructions had been issued to postal employees concerned, to prevent a recurrence."

- a. Were such instructions actually issued? If so;
- b. Set forth verbatim the text of said instructions
- c. In what form were said instructions issued?
- d. List the name, job title, civil service grade, and address of employment of each and every person to whom said instructions were directed.

Response

1. See Exhibit "A" attached to these responses. It is a copy of the letter sent on December 11, 1974 by the Postmaster, Brooklyn, NY to the plaintiff.

a. See the second paragraph of Exhibit "A." A copy of the letter was sent to the Postmaster, New York, NY, serving as a request for alerting of postal employees in New York, NY to the mailability of cards such as the one which had been sent by plaintiff to Cardinal Cooke.

b. The December 11, 1974 letter would have been referred to the Mailing Requirements Section of the New York Post Office for appropriate action. Records of such correspondence and replies or related papers are retained at New York only two years.

c. See responses to "a" and "b" above. Copies of any instructions which may have been issued to employees of the New York, NY Post Office, based upon the December 11, 1974 letter from the Postmaster at Brooklyn

would no longer be on file. Mr. Leo Buongiorno, Supervisor of Delivery and Requirements in the Mailing Requirements Section at the New York Post Office, has stated he does not recall any such instructions. However, see Exhibit "B" attached to these responses. It is a copy of Part 123.31 - .32, Postal Service Manual, which was published February 7, 1975 and is still in force. Instructions are contained therein to postal employees throughout the United States, not to refuse written, printed or graphic matter if the mailer demands that it be accepted for mailing.

d. See responses to "a," "b" and "c" above.

Interrogatory

2. Since January 1, 1950, have there been any administrative proceedings pursuant to 39 C.F.R. 953 or similar regulation, involving any newspaper or magazine on the grounds that said newspaper or magazine was alleged to have violated 18 U.S.C. 1718?

Response

2. Records of the Judicial Officer, U. S. Postal Service, which include all similar records of the former Post Office Department, are available for the period of July 10, 1951 to present. They indicate there have been no administrative proceedings against any newspaper or magazine on grounds that such publication allegedly violated 18 USC 1718.

Interrogatory

3. Since January 1, 1950, have there been any criminal prosecutions or civil court proceedings involving any newspaper or magazine and also involving any alleged violation of 18 U.S.C. 1718?

Response

3. An examination was made of records in the Postal Service Law Department which would indicate participation in "civil court proceedings involving any newspaper or magazine and also involving any alleged violation of 18 U.S.C. §1718." Those records go back no farther than the year 1957. The examination revealed no proceeding meeting the above-quoted description. The Postal Inspection Service keeps records of criminal prosecutions; but those records are not maintained in a form or manner which will permit retrieval of data separately for violations of section 1718, or by nature of the business conducted by offenders. Therefore, it is not feasible to respond to this interrogatory with certainty as to criminal actions against newspapers or magazines involving alleged violations of 18 USC 1718. In an effort to answer this question, inquiry has been made to the Administrative Office of the United States Courts. That Office began to record criminal prosecutions under individual statutes, including section 1718, as of July 1, 1976. It has a record of only one conviction under section 1718 since that date, and the offender was not identified as a publisher.

Interrogatory

4. If the answer to either paragraph #2 or #3 is yes, set forth the name of the publication involved, the text of the material in the publication alleged to have violated 18 U.S.C. 1718, the dates of the proceeding or prosecution, and the results of the proceeding or prosecution. Give this information for each of the five most recent instances.

Response

4. See responses to Interrogatories 2 and 3 above.

CUSTOMER SERVICE

CCU 44-5274 PFG:DJT:CMR:bjc
Tel. 624-1000, Ext. 262/263
Registered Article #13853

December 11, 1974

1st

Fred Cherry
P.O. Box 1017
Brooklyn, New York 11202



Dear Customer:

This is in regard to above noted article directed to Cardinal Cooke, 451 Madison Avenue, New York, New York 10022 and erroneously removed from the mails by a clerk at F.D.R. Station for possible violation of Postal Service Manual 123.45.

Inasmuch as a ruling was made on this type of mailing in your favor prior to this incident, we are sending a copy of this letter to the Postmaster, New York, New York 10001. That official will be requested to alert ALL employees and advise them of the mailability of this type correspondence.

We sincerely regret the inconvenience you experienced in this matter and we are enclosing a Form 3533 for refund of postage and Registry Fee. Kindly return same in attached envelope which requires no postage so that prompt payment can be made.

Again, we extend our apologies and wish to assure you that this type of irregularity will not occur again.

Very truly yours,

George E. Mirsch
Postmaster

Encls. (2)

cc: Postmaster, New York, New York
Mailing Requirements, New York, N.Y.
Mailing Requirements, Brooklyn, N.Y.

CHERRY & CHARMATZ v. PM GENERAL
USDC, ED NY - No. 76 Civ. 1485

Defendant's Responses to Plaintiff's
Interrogatories dated June 28, 1974

EXHIBIT

A

ALWAYS USE A RETURN ADDRESS ON ALL YOUR MAIL

123.3 ADVICE TO MAILERS—MAILABILITY DECISIONS

31 GENERAL ADVICE

When a mailer seeks advice as to whether particular matter may be mailed, or where the postmaster otherwise learns that matter of questionable mailability is to be mailed, it is the postmaster's responsibility to call to the mailer's attention the relevant provisions of Parts 123 and 124 and any relevant guidelines issued by the Postal Service. The scope of the postmaster's authority to decide whether particular matter is nonmailable, and to exclude matter from the mails in accordance with his decision, depends upon the nature of the matter in question and is determined by this section.

32 MAILABILITY DECISION NOT AUTHORIZED—WRITTEN, PRINTED AND GRAPHIC MATTER

Postmasters are not authorized to decide whether written, printed or graphic matter (Part 123) is nonmailable and to exclude such matter from the mails in accordance with their decisions. As stated in 123.31, postmasters should call the attention of prospective mailers of such matter to any apparently relevant provisions of Part 123. If, after being so informed, the mailer demands that matter described in Part 123 be accepted for mailing, such matter shall be accepted and shall be treated as provided in 123.35.

33 MAILABILITY DECISIONS AUTHORIZED

Postmasters may decide whether articles and substances (Part 124) are nonmailable and shall, where appropriate, refuse to accept for mailing such matter determined to be nonmailable. If the mailer desires review of the postmaster's decision, the postmaster shall refer a sample or complete statement of the facts, whichever may be appropriate, to the Director, Office of Mail Classification, Rates and Classification Department.

34 LAWS AND REGULATIONS OF OTHER AGENCIES

Postmasters shall not give advisory opinions concerning the mailing of articles and substances (Part 124) under laws and regulations administered by agencies other than the Postal Service, but postmasters shall inform postal customers of the existence of such laws and regulations, and the source from which further information may be obtained, when known. For example, postal customers with questions about the interstate shipment of rifles and shotguns should be referred to the Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226, or to the nearest regional director of that Bureau.

35 REFERRAL TO THE INSPECTION SERVICE

351 Mail matter, believed to be nonmailable under this part, that has entered the mails, or a report containing information on such matter, shall be referred immediately to the Inspection Service and the matter shall be handled in accordance with instructions promptly furnished by the Inspection Service.

352 Mail matter, believed to be nonmailable under Part 124, that has entered the mails shall be withheld from dispatch or delivery. Matter coming within the scope of 124.4 thru 124.7 (firearms and switchblade knives, controlled substances, motor vehicle master keys, abortive and contraceptive devices and materials, and intoxicating liquors) or a report containing information on such matter, shall be immediately referred to the attention of the Inspection Service. All other articles and substances, or a report containing information on such matter, shall be referred to the Director, Office of Mail Classification, Rates and Classification Department. Postmasters are authorized and directed to take any steps reasonable and necessary to protect Postal Service personnel and equipment from the effects of potentially dangerous or injurious materials or substances found in the mails.

Post Office Services (Domestic) 11-34, 2-7-75, Issue 77

CHERRY & CHARMATZ v. PM GENERAL
USDC, ED NY - No. 76 Civ. 1485

Defendant's Responses to Plaintiffs'
Interrogatories dated June 28, 1977

EXHIBIT

B

B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
FRED CHERRY and ALAN CHARMATZ, :

Plaintiffs, :

-against- :

THE POSTMASTER GENERAL OF THE
UNITED STATES, :

Defendant.
-----x

NOTICE OF CROSS-MOTION

Civil Action No.

76 C 1485

S I R S:

PLEASE TAKE NOTICE, that upon all prior papers herein filed, and the annexed affidavits, and the defendant's supporting memorandum of law, the undersigned will move this Court, before the Honorable Mark A. Costantino, in Courtroom 1, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on September 7, 1977 at 10:00 A.M. or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, dismissing this action.

Dated: Brooklyn, New York
September 1, 1977

Yours, etc.,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendant
225 Cadman Plaza East
Brooklyn, New York 11201

By:

Elaine C. Buck

ELAINE C. BUCK
Assistant U. S. Attorney

GERALD JACOBSON, being duly sworn, deposes and says:

1. I am a Regular Distribution Clerk in the registry section of the New York City Church Street Station of the United States Postal Service. I have been in the Church Street registry section for approximately 17 years.

2. My duties as a Regular Distribution Clerk are to accept mail from postal customers for registration service and dispatch same.

3. Approximately two years ago a man came to the registry window at which I was working and presented a postal card for mailing. The man, a middle aged white Caucasian, was tall, skinny, and drawn. As best as I can recall the man indicated that I should read the back of the postal card:

4. I read the postal card as the man had instructed. From what I read I thought that the content of the card might be objectionable.

5. The man advised me that I wasn't supposed to accept the card for mailing because it was in violation of postal regulations.

6. As best as I can recall, I called the information section at the Church Street Station, and an employee in that section confirmed the man's representation.

7. As a result of the above, I refused to accept the postal card for mailing. Before leaving the window the gentleman asked for my name, which I gave.

E. MARTINEZ, being duly sworn, deposes and says:

1. I am a Postal Inspector at the General Post Office in San Juan, Puerto Rico. I have been in the Inspection Service for approximately 6 years. I have been employed in the Postal Service for approximately 19 years.

2. My duties as a Postal Inspector are performing security, investigative and audit functions concerned with protecting the U. S. Mail and the mail system in Puerto Rico and the Virgin Islands.

3. I recall that during the latter part of 1975 an individual who introduced himself as Fred Cherry, and accompanied by another man, visited my office at the General Post Office.

4. Mr. Cherry had a large typewritten postal card, which was very critical of the Gay Liberation Movement. I recall that it accused some individuals of being "gay." I do not recall the names of the individuals but to the best of my knowledge they were government officials or politicians.

5. Mr. Cherry was very upset because a window clerk had refused to accept the large postal card as registered mail. He stated that he was very familiar with the Postal Service Manual and that all first class mail could be registered.

6. I called downstairs and spoke to Mr. I. Padilla, the Window Service Supervisor, who explained that the postal card had been refused because it was not properly sealed as required in the Postal Service Manual.

7. I showed Mr. Cherry the applicable section in the Postal Service Manual. Nevertheless, Mr. Cherry continued to insist that he was right.

8. I suggested to Mr. Cherry that he put the card in an envelope and seal the envelope to make the postal card acceptable as registered mail.

9. Mr. Cherry refused to do this because he insisted that all first class mail could be registered. He became very upset and started shouting, "Don't you people understand English?" At that point the man who was with Mr. Cherry escorted him out of my office.

10. This incident was witnessed by Special Investigator N. Stuart, who was sharing my office at the time.

11. During my employment with the Postal Service, I have never heard of anyone other than Fred Cherry mailing or attempting to mail a postal card via registered mail.

Affidavit No. 2099

Sworn to before me this
25th day of April, 1977



Edward Martinez
E. MARTINEZ

Jose Elias Zayas
JOSE ELIAS ZAYAS
NOTARY PUBLIC

NORBERTO STUART, being duly sworn, deposes and says:

1. I am a Special Investigator with the Postal Inspection Service at the General Post Office in San Juan, Puerto Rico. I have been with the Postal Inspection Service for 12 of the approximately 23 years that I have been employed by the Postal Service.

2. My duties as a Special Investigator are to assist Postal Inspectors in the investigation of postal offenses.

3. I recall that in 1975 an individual known to me as Fred Cherry accompanied by another man came to the office which I was sharing with Postal Inspector E. Martinez.

4. Mr. Cherry complained that postal service employees had wrongfully refused to accept several oversized postal cards from him for registry.

5. Mr. Martinez advised Mr. Cherry that matter accepted for registration had to be sealed. Mr. Martinez advised Mr. Cherry that if he wanted to mail the cards as registered mail he would have to insert them in an envelope and seal the envelope.

6. Mr. Martinez showed him the provision of the Postal Service Manual which requires that matter accepted for registration be sealed.

7. Mr. Cherry insisted that we didn't know anything and that he could mail the cards the way he had brought them.

8. Mr. Cherry was very upset and obnoxious. At my suggestion, the gentleman who was with Mr. Cherry escorted him out of the office.

9. In all my years as a Postal Service employee, I have never known of anyone mailing postal cards by registered mail.

WILLIAM RIVERA, being duly sworn, deposes and says:

1. I am the Station Manager of the San Juan Post Office in Hato Rey, Puerto Rico, and have been employed by the Postal Service for the last 25 years.

2. My duties as Station Manager are direct and supervise all postal operations at station level.

3. On March 9, 1975 I was called to the Inquiry Office at the Old San Juan Station by Heriberto Avila, Inquiry Clerk, concerning an inquiry made by a Mr. Fred Cherry.

4. Mr. Cherry wanted to mail four oversize postal cards by registered mail.

5. I explained to Mr. Cherry that these postal cards were unmailable as registered mail. He disagreed with me and appeared upset as he left the Inquiry Office.

6. Later that same day the Registry Dispatch Clerk, Mr. Miranda, called my attention to the fact that the aforementioned cards had been accepted as registered mail by Clerk Juan Perez.

7. I asked Mr. Perez about the acceptance of Mr. Cherry's postal cards. Mr. Perez admitted that he had made a mistake in accepting them for registration.

8. That same day I wrote to Mr. Cherry informing him that I was returning his postal cards to him because postal cards cannot be sent by registered mail. (Copy of letter annexed hereto) I suggested that he contact the Mail Requirements Office at the General Post Office, San Juan, Puerto Rico, should he have further questions. I also informed him of his right to a refund of the money he paid to mail the postal cards by registered mail.

San Juan, P. R. 00902

May 9, 1975

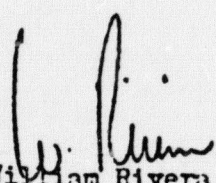
Mr. Fred Cherry
603 Miramar Ave.
Santufce, P. R. 00907

Dear Sir:

According to Sections 131.222 and 161.32 of the Postal Manual the enclosed Registered mail # 38528, 29, 30, and 31, oversized cards, are unmailable.

If you desire any additional information please refer to Mail Requirement Office at the General Post Office in San Juan, P. R. 00936, as instructed in the letter from Consumer Advocate.

You are entitled to a refund for the amount of postage pasted to the cards.

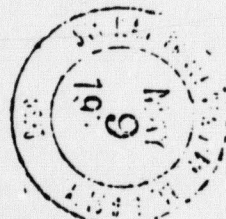

William Rivera
Acting Manager
Old San Juan Station
San Juan, P. R. 00905

REGISTERED NO.

38555

Value \$	Special Delivery \$
Reg. Fee \$	Return Receipt \$
Handling Charge \$	Restricted Delivery \$
Postage \$	☒ AIRMAIL
POSTMASTER (By) 	

POSTMARK OF

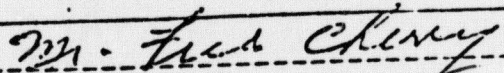


MAILING OFFICE

FROM MAIL ROOM

OLD SAN JUAN STATION
SAN JUAN, PUERTO RICO 00902

TO


603 Miramar Ave.
Santufce, P. R.

* G.P.O. 1974-50-269

COMMONWEALTH OF PUERTO RICO)
: ss.:
CITY OF SAN JUAN)

CRISTOBAL LLITERAS, being duly sworn, deposes and says:

1. I am the Director of Mail Processing at the General Post Office in San Juan, Puerto Rico. I have been the Director of Mail Processing for approximately six years. Prior to that I was employed as Training Officer at San Juan, Puerto Rico, for four years.

2. My duties as a District Director, Mail Processing, are to direct the processing functions of the Caribbean District.

3. I recall that sometime in 1975, a gentleman who introduced himself as Fred Cherry came into my office at the San Juan General Post Office with several postal cards which appeared to be defamatory and stated that he wanted to mail them by registered mail.

4. I showed him the Postal Manual where it specifies the conditions for mailing matter by registered mail and advised him that postal cards do not meet the requirements for registered mail.

5. He insisted that we, the Postal Service, were wrong.

6. In my 30 years of experience in the Postal Service, I have known of no instances where customers have requested that postal cards be sent by registered mail.



COMMONWEALTH OF PUERTO RICO)

: ss :

CITY OF SAN JUAN)

RAMON VELEZ, being duly sworn, deposes and says:

1. I am a Window Clerk at the General Post Office, San Juan, Puerto Rico. I have been employed as a Clerk at the San Juan General Post Office for approximately three and a half years. Prior to that I was employed at the General Post Office, San Juan, as a Clerk.

2. My duties as a Window Clerk are to give the best service to the customers and to accept for mailing, register, certify and insure parcels, letters and sell stamps.

3. Early in 1976 a middle aged skinny, North American man came to the post office window of the General Post Office, San Juan, at which I was working and asked me to accept several oversized postal cards for registration.

4. I told the man that postal cards could not be sent by registered mail.

5. The man disagreed and insisted on talking to my supervisor.

6. Mr. Caceres, my supervisor, told the man that the postal cards are not acceptable for registration since they cannot be sealed as required in 161.32, Postal Service Manual.

7. When the man continued to persist in insisting to my supervisor that the cards be accepted for registered mailing, I left and returned to my duties at the window.

COMMONWEALTH OF PUERTO RICO)
: ss.:
CITY OF SAN JUAN)

JOSE R. CACERES, being duly sworn, deposes and says:

1. I am the Acting Manager of Main Office Window Services at the General Post Office in San Juan, Puerto Rico.

2. During the early part of 1976, a man identified as Mr. Fred Cherry was referred to me by an employee at the Customer Service window of the Post Office.

3. Mr. Cherry explained to me that he wanted to mail some oversized postal cards by registered mail.

4. I explained to Mr. Cherry that registered matters have to be sealed and that, accordingly, the only way he could mail these cards by registered mail would be to insert them in sealed envelopes and then register the envelopes.

5. Mr. Cherry refused to do this and insisted on mailing the postal cards the way he had brought them.

6. I referred Mr. Cherry to Section 161.32 of the Postal Service Manual which I understood to require that matters sent by registered mail must be sealed.

7. At one point I consulted with Postal Inspector Neil Kamichoff, who agreed that the cards could not be sent by registered mail.

8. After asking me for my name and position, both of which I gave, Mr. Cherry said "Mr. Caceres, do you refuse to accept these postal cards?" I replied that pursuant to Section 161.32 of the Postal Service Manual ~~I could not accept them to be registered~~ because they were not in sealed envelopes.

COMMONWEALTH OF PUERTO RICO)

: ss.:

CITY OF SAN JUAN)

NEIL C. KAMICHOFF, being duly sworn, deposes and says:

1. I am a U. S. Postal Inspector at the General Post Office in San Juan, Puerto Rico. I have been employed as a Postal Inspector for 5 1/2 years.

2. In late October, 1975, I was assigned by Division Headquarters in Newark, New Jersey, for approximately eight weeks to the General Post Office in San Juan, Puerto Rico, to replace Inspector E. Martinez of that Post Office who was on leave.

3. In early 1976 at the General Post Office in San Juan, a postal clerk from the Window Services Unit came to the Inspectors' Office and inquired of me as to whether a post card was mailable in the registry system.

4. I particularly remember this incident because the clerk indicated that the postal card bore scurrilous and defamatory inscriptions against several Postal Inspectors.

5. I consulted the Postal Service Manual and based upon Section 161.3 concerning preparation of articles to be registered concluded that since a postal card could not be sealed, it could not be mailed in the registry system.

6. At no time did I tell the clerk that the postal card could not be mailed because it bore scurrilous and defamatory inscriptions.

7. I have never met or spoken to either of the plaintiffs in the above captioned action.

P. O. BOX 1017
BROOKLYN, N. Y. 11202
RETURN REQUESTED

● SENDER. Complete item in the "RETURN TO" space on Add your address in the "RETURN TO" space on service.

1. The following service is requested (check one):
☐ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery... 35¢
☐ RESTRICTED DELIVERY
☐ Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY
☐ Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO
 THEODORE STANGER
 THE MIAMI HERALD
 ONE HERALD PLAZA
 MIAMI, FLA. 33101

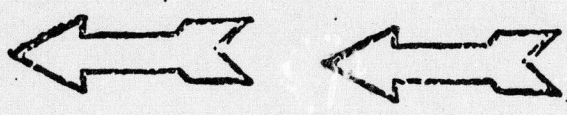
3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 6773 | |

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE _____ AUTHORIZED AGENT

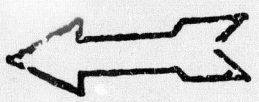
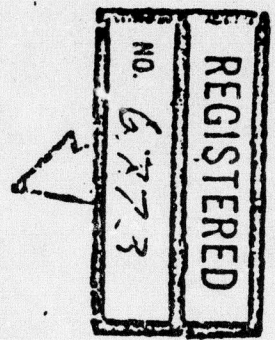
4. DATE OF DELIVERY _____ POSTMARK _____

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: _____ CLERK'S INITIALS _____



THEODORE STANGER
THE MIAMI HERALD
ONE HERALD PLAZA
MIAMI, FLA. 33101

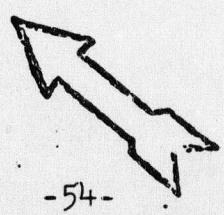


NOTICE

TO ALL POSTAL EMPLOYEES & CIVIL LIBERTARIANS
 This card is the eleventh in a continuing series. Although these cards contain nothing but truthful information and fair comment on persons and organizations in respect of public affairs, they nevertheless VIOLATE Sections 17345 & 17382 of the Postal Service Manual. In addition, under 18 U.S.C. §1718 (U.S. Penal Code), the sender of these cards actually faces imprisonment for the "crime" of revealing the truth!

NOV 123.44F

FIRST CLASS
MAIL



N. Y. CITY COUNCILMEN SELL OUT TO HOMOSEXUAL CHILD-MOLESTERS

ARE YOU AWARE that Carter Burden, Miriam Friedlander, Reverend Louis R. Gigante, Mrs. Carol Greitzer, Arthur J. Katzman, Stephen B. Kaufman, Anthony J. Mercorella, Luis A. Olmedo, Ms. Mary Pinkett, Edward L. Sadowsky, Barry Salzman, Frederick E. Samuel, Stanley Simon, Robert S. Stringul, Henry J. Stern, Ramon S. Velez, Robert F. Wagner, Jr., and Theodore S. Weiss, all of whom are members of the New York City Council, have sold out to the organized homosexual movement of America, and are aiding and abetting homosexuals to commit sodomy on children?

There is, at present, a bill before the New York City Council, which, if enacted into law, would force the schools of New York City to hire homosexual child-molesters as teachers. All the above-named members of the New York City Council have voted in favor of this bill. The bill was narrowly defeated on May 23rd of this year. However, since then, the bill has been reintroduced by Carter Burden, one of the bill's sponsors. Theodore Weiss, another sponsor of the bill, predicts that the bill will be enacted into

by Morty Manfred, President of the N.Y. Gay Activists Alliance. In that letter Manfred said that he saw nothing wrong with the idea of older men having sex with boys that young.

There are even organizations for homosexual child-molesters. There is the Gay Pedophile Liberation Front and the Church of Greek Love in Philadelphia, Pa. There is also an organization, called "Better Life", which advertises in The ADVOCATE, the nation's largest-selling and most influential homosexual publication. "Better Life" advertises its "newsletter for pedophiles only". Also, The ADVOCATE, in its issue of December 19, 1973, reported on the "Second International Congress on Pedophilia (boy love)" held in Holland. The ADVOCATE article relates that one of the organizers "termed the Nov. 11 meeting a considerable success and said it appears that these twice-yearly meetings of Dutch pedophiles with guests from other countries can become a permanent arrangement."

There are many more examples of this sort, which cannot be set out here because of space limitations. And yet, in spite of

derived, in part, from the book: GREEK LOVE. Therefore not only has The Times published advertisements inciting to crime, but crime has apparently been committed, incited by advertisements in The Times. On the other hand, The Times refuses to print any ad criticizing homosexuality, because the homosexuals who control The Times consider such an ad to be "offensive to good taste."

However, The New York Times is more than willing to publish ads attacking other groups. For example, on February 16, 1972, The Times published a vicious racist advertisement, advocating that Blacks should be held down in a position of inferiority. On June 6, 1972, The Times published another racist advertisement - this one a full-page diatribe against Jews, stating, in part, that the Jews of the United States form "a potent Fifth Column". But The Times will not publish an ad attacking homosexuals, because the homosexuals who control The Times believe that homosexuals are superior to everyone else. That is also why The Times has published editorials in behalf of the bill under discussion.

* * * * *

This convention was co-hosted by the New York Gay Activists Alliance. This convention drew up a political platform which included planks demanding: "Repeal of all laws prohibiting private sexual acts involving consenting persons. Repeal of all laws governing the age of sexual consent. Federal encouragement and support for sex education courses prepared and taught by qualified Gay women and men presenting Homosexuality as a valid healthy preference and 'life-style', and as a viable alternative to heterosexuality." In other words, a convention of homosexuals from all over the nation demands that the government help them in their efforts to persuade your children to commit sodomy with them.

Then, on February 8, 1973, the VILLAGE VOICE, a local newspaper, reported on a vast market, centered in Times Square, New York City, in which older men were taking advantage of the poverty and ignorance of boys as young as eleven years of age, by paying those boys to have sex with them. The next week's issue of the same paper carried a letter-to-the-editor

"bribe". But the holy Reverend has yet to explain why he considers homosexuals to be so noble and sacred that they should be glorified and exalted above other people.

The Councilmen named at the beginning of this message sold out to the organized homosexual movement of America in order to further their political careers by obtaining the continuing editorial support of The New York Times. The Times has a blatant, pro-homosexual editorial bias. For example, on July 3 and July 10 of 1966, The Times published advertisements for the book: GREEK LOVE. This book exhorts and encourages homosexual child-molesters to commit sodomy on young boys and instructs them on how to get away with it.

The advertisements themselves specifically recommend sex between men and young boys and are thus incitements to lawbreaking. Furthermore, the Long Island Press, in its issue of May 23, 1972, reports the arrest of members of an international club devoted to sodomy between men and young boys. That club even went so far as to publish a newsletter. The contents of that newsletter were apparently

sixteen, and have made only token efforts to impede homosexual prostitution involving boys younger than sixteen. This is one of the reasons homosexuals have been flocking to New York City in recent years. If the bill under discussion is passed, the number of homosexuals flocking to New York City will increase even more.

Jeanne Cordova, a lesbian leader, is quoted in the July 17, 1974 issue of The ADVOCATE as stating: "I predict homosexuality will be the life-style of the future". Homosexuality will indeed become the life style of the future if bills such as the one under discussion are enacted into law. Therefore, for your children's sake and your own sake, are to it that the N.Y. Gay Activists Alliance's stooges in the N.Y. City Council are defeated in their bids for re-election.

This card has been written, published, and mailed by:

Fred Cherry
Post Office Box 1017
Brooklyn, N.Y. 11202

AN OPEN LETTER TO THE HONORABLE STANLEY SIK. ALTHOUGH THIS CARD WAS PRINTED IN 1974, THE INFORMATION HEREIN IS RELEVANT TO MIAMI TODAY, THE REASON I AM SENDING YOU THIS CARD BY REGISTERED MAIL IS THAT THERE ARE A COUPLE OF FAGGOT POSTAL INSPECTORS IN SAN JUAN, WHICH IS WHERE I AM MAILING THIS CARD. IF I WERE TO SEND THIS CARD BY REGULAR MAIL, THOSE FAGGOT POSTAL INSPECTORS WOULD CATCH IT, AND I WOULD NEVER KNOW IT.

YOURS TRULY,
Fred Cherry

N. Y. CITY COUNCILMEN SELL OUT TO HOMOSEXUAL CHILD-MOLESTERS

ARE YOU AWARE that Carter Burden, Miriam Friedlander, Reverend Louis R. Gigante, Mrs. Carol Greitzer, Arthur J. Katzman, Stephen B. Kaufman, Anthony J. Mercurella, Luis A. Olmedo, Ms. Mary Pinkett, Edward L. Sadowsky, Harry Salzman, Frederick E. Samuel, Stanley Simon, Robert S. Steingut, Henry J. Stern, Ramon S. Velez, Robert F. Wagner, Jr., and Theodore S. Weiss, all of whom are members of the New York City Council, have sold out to the organized homosexual movement of America, and are aiding and abetting homosexuals to commit sodomy on children?

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On March 9, 1973, The New York Times

lations and repressions contained therein!" On another occasion, the homosexual newspaper GAY, in its issue of March 20, 1972, reported on a convention of homosexual organizations from all over the nation. This convention was co-hosted by the New York Gay Activists Alliance. This convention drew up a political platform which included planks demanding: "Repeal of all laws prohibiting private sexual acts involving consenting persons. Repeal of all laws governing the age of sexual consent. Federal encouragement and support for sex education courses prepared and taught by qualified Gay women and men presenting Homosexuality as a valid healthy preference and life-style, and as a viable alternative to heterosexuality." In other words, a convention of homosexuals from all over the nation demands that the government help them in their efforts to persuade your children to commit sodomy with them.

Then, on February 8, 1973, the VILLAGE VOICE, a local newspaper, reported on a vast market, centered in Times Square, New York City, in which older men were taking advantage of the poverty and ignorance of boys as young as eleven years of age, by paying those boys to have sex with them. The next week's issue of the same paper carried a letter-to-the-editor

Reverend Louis R. Gigante, a member of the N.Y. City Council and one of the stooges of the N.Y. Gay Activists Alliance, has vilified those of his fellow Councilmen who oppose the bill, by calling them "bigots". But the holy Reverend has yet to explain why he considers homosexuals to be so noble and sacred that they should be glorified and exalted above other people.

The Councilmen named at the beginning of this message sold out to the organized homosexual movement of America in order to further their political careers by obtaining the continuing editorial support of The New York Times. The Times has a blatant, pro-homosexual editorial bias. For example, on July 3 and July 10 of 1966, The Times published advertisements for the book: GREEK LOVE. This book exhorts and encourages homosexual child-molesters to commit sodomy on young boys and instructs them on how to get away with it.

The advertisements themselves specifically recommend sex between men and young boys and are thus incitements to lawbreaking. Furthermore, the Long Island Press, in its issue of May 23, 1972, reports the arrest of members of an international club devoted to sodomy between men and young boys. That club even went so far as to publish a newsletter. The contents of that newsletter were apparently

police have gone on to arrest women prostitutes and entrap and arrest women prostitutes and their clients. At the same time the police have done nothing to impede homosexual prostitution involving boys as young as sixteen, and have made only token efforts to impede homosexual prostitution involving boys younger than sixteen. This is one of the reasons homosexuals have been flocking to New York City in recent years. If the bill under discussion is passed, the number of homosexuals flocking to New York City will increase even more.

Jeanne Cordova, a lesbian leader, is quoted in the July 17, 1974 issue of The ADVOCATE as stating: "I predict homosexuality will be the life-style of the future". Homosexuality will indeed become the life style of the future if bills such as the one under discussion are enacted into law. Therefore, for your children's sake and your own sake, see to it that the N.Y. Gay Activists Alliance's stooges in the N.Y. City Council are defeated in their bids for re-election.

This card has been written, published, and mailed by:

Fred Cherry
Post Office Box 1017
Brooklyn, N.Y. 11202

DEAR REV. PREVO,
CONGRATULATIONS FOR STOPPING THE PASSAGE OF A BILL
SIMILAR TO THE BILL DESCRIBED ABOVE. THE REASON I SEND YOU
THIS CARD BY REGISTERED MAIL IS THAT I AM MAILING IT FROM
SAN JUAN, PUERTO RICO AND THERE ARE A PAIR OF FAGGOT POSTAL
INSPECTORS HERE, NAMED WILSON & STUART, WHO ARE IN THE
HABIT OF SURREPTITIOUSLY SEIZING OTHER COPIES OF THIS CARD
YOURS TRULY, Fred Cherry

N. Y. CITY COUNCILMEN SELL OUT TO HOMOSEXUAL CHILD-MOLESTERS

ARE YOU AWARE that Carter Burden, Miriam Friedlander, Reverend Louis H. Gigante, Mrs. Carol Greltzer, Arthur J. Katzman, Stephen B. Kaufman, Anthony J. Mercorella, Luis A. Olmedo, Mrs. Mary Pinkett, Edward L. Sadowsky, Barry Salzman, Frederick E. Samuel, Stanley Simon, Robert S. Steingut, Henry J. Stern, Itamon S. Velez, Robert F. Wagner, Jr., and Theodore S. Weiss, all of whom are members of the New York City Council, have sold out to the organized homosexual movement of America, and are aiding and abetting homosexuals to commit sodomy on children?

There is, at present, a bill before the New York City Council, which, if enacted into law, would force the schools of New York City to hire homosexual child-molesters as teachers. All the above-named members of the New York City Council have voted in favor of this bill. The bill was narrowly defeated on May 23rd of this year. However, since then, the bill has been reintroduced by Carter Burden, one of the bill's sponsors. Theo-

by Morty Manford, President of the N.Y. Gay Activists Alliance. In that letter Manford said that he saw nothing wrong with the idea of older men having sex with boys that young.

There are even organizations for homosexual child-molesters. There is the Gay Pederasts Liberation Front and the Church of Greek Love in Philadelphia, Pa. There is also an organization, called "Better Life", which advertises in The ADVOCATE, the nation's largest-selling and most influential homosexual publication. "Better Life" advertises its "newsletter for pederasts only". Also, The ADVOCATE, in its issue of December 19, 1973, reported on the "Second International Congress on Pedophilia (boy love)" held in Holland. The ADVOCATE article relates that one of the organizers "termed the Nov. 11 meeting a considerable success and said it appears that these twice-yearly meetings of Dutch pedophiles with guests from other countries can become a permanent arrangement."

There are many more examples of this sort, which cannot be set out here because

derived, in part, from the book: GREEK LOVE. Therefore not only has The Times published advertisements inciting to crime, but crime has apparently been committed, incited by advertisements in The Times. On the other hand, The Times refuses to print any ad criticizing homosexuality, because the homosexuals who control The Times consider such an ad to be "offensive to good taste."

However, The New York Times is more than willing to publish ads attacking other groups. For example, on February 14, 1972, The Times published a vicious racist advertisement, advocating that Blacks should be held down in a position of inferiority. On June 6, 1972, The Times published another racist advertisement—this one a full-page diatribe against Jews, stating, in part, that the Jews of the United States form "a potent Fifth Column". But The Times will not publish an ad attacking homosexuals, because the homosexuals who control The Times believe that homosexuals are superior to everyone else. That is also why The Times has published editorials in behalf of the bill under discus-

* * * *

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The Councilmen named at the beginning of this message sold out to the organized homosexual movement of America in order to further their political careers by obtaining the continuing editorial support of The New York Times. The Times has a blatant, pro-homosexual editorial bias. For example, on July 3 and July 10 of 1966, The Times published advertisements for the book: GREEK LOVE. This book exhorts and encourages homosexual child-molesters to commit sodomy on young boys and instructs them on how to get away with it.

The advertisements themselves specifically recommend sex between men and young boys and are thus incitements to lawbreaking. Furthermore, the Long Island Press, in its issue of May 23, 1972, reports the arrest of members of an international club devoted to sodomy between men and young boys. That club even went so far as to publish a newsletter. The contents of that newsletter were apparently

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Jeanne Cordova, a lesbian leader, is quoted in the July 17, 1974 issue of The ADVOCATE as stating: "I predict homosexuality will be the life-style of the future". Homosexuality will indeed become the life style of the future if bills such as the one under discussion are enacted into law. Therefore, for your children's sake and your own sake, see to it that the N.Y. Gay Activists Alliance's stooges in the N.Y. City Council are defeated in their bids for re-election.

This card has been written, published, and mailed by:

Fred Cherry
Post Office Box 1017
Brooklyn, N.Y. 11202

AN OPEN LETTER TO JOSEPH A. CALIFANO, JR. :

Your client Nader isn't the only one who has trouble with the Postal "Service". You should see what goes on here. There is a character in the Post Office here named Stuart who carries on as if he were a member of the local Gay Liberation Front.

Yours truly,

Fred Cherry

FRED CHERRY

P. O. BOX 1017
BROOKLYN, N. Y. 11208
RETURN REQUESTED

NOV 1 1968
1 20

"Chicken-Shit" Letters
Superintendent of Operations
General Post Office
San Juan, Puerto Rico 00936

RETURN RECEIPT
REQUESTED

NOTICE

DO NOT
FOLD

TO ALL POSTAL EMPLOYEES & CIVIL LIBERTARIANS
This card is the equivalent to a continuing strike. Although these cards
contain nothing but truthful information and fair comment on persons and
organizations in respect of public affairs, they nevertheless VIOLATE
Sections 2314 & 2312 of the Postal Service Manual. In addition, under
18 U.S.C. 879 (US Penal Code), the sender of these cards actually faces
imprisonment for the "crime" of revealing the truth!
NOV 12 3 44F

FIRST CLASS
MAIL

REGISTERED
NO. 12412



N. Y. CITY COUNCILMEN SELL OUT TO HOMOSEXUAL CHILD-MOLESTERS

ARE YOU AWARE that Carter Burden, Miriam Friedlander, Reverend Louis R. Gigante, Mrs. Carol Greitzer, Arthur J. Katsman, Stephen B. Kaufman, Anthony J. Mercorella, Luis A. Olmeda, Ms. Mary Pinkett, Edward L. Sadowsky, Barry Salzman, Frederick E. Samuel, Stanley Simon, Robert S. Stielagut, Henry J. Stern, Ramon S. Weiss, Robert F. Wagner, Jr., and Theodore S. Weiss, all of whom are members of the New York City Council, have sold out to the organized homosexual movement of America, and are aiding and abetting homosexuals to commit sodomy on children?

There is, at present, a bill before the New York City Council, which, if enacted into law, would force the schools of New York City to hire homosexual child-molesters as teachers. All the above-named members of the New York City Council have voted in favor of this bill. The bill was narrowly defeated on May 2nd of this year. However, since then, the bill has been reintroduced by Carter Burden, one of the bill's sponsors. Theodore Weiss, another sponsor of the bill, predicts that the bill will be enacted into law after Election Day in November, when the will of the people may be safely disregarded.

Leaders of various homosexual organizations, when speaking in behalf of homosexual legislation such as the bill under discussion, claim that homosexuals, in general, are not child-molesters. But, on other occasions, men of these very same leaders are urging their followers to engage in homosexual child-molestering. For example, Gregory Battcock, writing in the May 10th, 1971 issue of the homosexual newspaper GAY, stated: "I'd always thought that one of the reasons one bothered to be homosexual in the first place was that you could be promiscuous and a child-molester without anyone so much as raising an eyebrow. After all, both were perfectly acceptable conventions—otherwise why be homosexual? Certainly not to ape straight behavior and accept the strangulations and repressions contained therein!" On another occasion, the homosexual newspaper GAY, in its issue of March 20, 1972, reported on a convention of homosexual organizations from all over the nation. This convention was co-hosted by the New York Gay Activists Alliance. This convention drew up a political platform which included planks demanding: "Repeal of all laws prohibiting private sexual acts involving consenting persons. Repeal of all laws governing the age of sexual consent. Federal encouragement and support for sex education courses prepared and taught by qualified Gay women and men presenting Homosexuality as a valid healthy preference and life-style, and as a viable alternative to heterosexuality." In other words, a convention of homosexuals from all over the nation demands that the government help them in their efforts to persuade your children to commit sodomy with them.

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by Morty Manford, President of the N.Y. Gay Activists Alliance. In that letter Manford said that he saw nothing wrong with the idea of older men having sex with boys that young.

There are even organizations for homosexual child-molesters. There is the Gay Pedophile Liberation Front and the Church of Greek Love in Philadelphia, Pa. There is also an organization, called "Better Life", which advertises in The ADVOCATE, the nation's largest-selling and most influential homosexual publication. "Better Life" advertises its "newsletter for pedophiles only". Also, The ADVOCATE, in its issue of December 10, 1972, reported on the "Second International Congress on the Pedophilia (boy love)" held in Holland. The ADVOCATE article relates that one of the organizers "termed the Nov. 11 meeting a considerable success and said it appears that these twice-yearly meetings of Dutch pedophiles with guests from other countries can become a permanent arrangement."

There are many more examples of this sort, which cannot be set out here because of space limitations. And yet, in spite of all these facts, homosexual spokesmen claim that a homosexual selected at random is less likely to be a child-molester than a heterosexual selected at random!

There is another reason why the bill under discussion should not be passed. The bill is supposed to be an anti-discrimination, civil-rights bill. Actually, the bill was schemed up by the homosexuals of the N.Y. Gay Activists Alliance and presented to their stooges in the N.Y. City Council. The bill was deliberately designed to favor homosexuals over all other sexual minorities and, in fact, even over the majority of normal people. The bill protects homosexuals from discrimination, but does not protect a person from discrimination based on marital status. Thus a homosexual employer could specify that he wants to hire only single people, while a married employer could not specify that he wants to hire only non-homosexual people. Reverend Louis R. Gigante, a member of the N.Y. City Council and one of the stooges of the N.Y. Gay Activists Alliance, has vilified those of his fellow Councilmen who oppose the bill, by calling them "bigots". But the holy Reverend has yet to explain why he considers homosexuals to be so noble and sacred that they should be glorified and exalted above other people.

The Councilmen named at the beginning of this message sold out to the organized homosexual movement of America in order to further their political careers by obtaining the continuing editorial support of The New York Times. The Times has a blatant, pro-homosexual editorial bias. For example, on July 3 and July 10 of 1966, The Times published advertisements for the book: GREEK LOVE. This book exhorts and encourages homosexual child-molesters to commit sodomy on young boys and instructs them on how to get away with it.

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Moreover, The New York Times is more than willing to publish ads attacking other groups. For example, on February 14, 1972, The Times published a vicious racist advertisement, advocating that: Blacks should be held down in a position of inferiority. On June 6, 1972, The Times published another racist advertisement—this one a full-page diatribe against Jews. Stating, in part, that the Jews of the United States form "a potent Fifth Column". But The Times will not publish an ad attacking homosexuals, because the homosexuals who control The Times believe that homosexuals are superior to everyone else. That is also why The Times has published editorials in behalf of the bill under discussion.

On March 9, 1972, The New York Times published an editorial masquerading as a news story in which it was stated that one of the worst things a woman can do is become a prostitute, and that all women prostitutes should be imprisoned for their own good. Then, on March 20, 1972, The Times published another editorial masquerading as a news story in which it was stated that becoming a male homosexual prostitute is sometimes a good thing for fourteen-year-old boys and can lead to a good future for such boys. The reason The Times published these editorials is that the homosexuals who control The Times would like to see all the women prostitutes drive out of New York City and replaced with teen-age boy homosexual prostitutes. As a matter of fact, under the editorial urging of The Times, the New York City police have been engaging in a deliberately discriminatory policy of law enforcement. The police have gone all-out in their efforts to entrap and arrest women prostitutes at their clients. At the same time the police have done nothing to impede homosexual prostitution involving boys as young as sixteen, and have made only token effort to impede homosexual prostitution involving boys younger than sixteen. This is one of the reasons homosexuals have been flocking to New York City in recent years. If the bill under discussion is passed, the number of homosexuals flocking to New York City will increase even more.

Joanne Carolea, a lesbian leader, quoted in the July 17, 1974 issue of The ADVOCATE as stating: "I predict homosexuality will be the life-style of the future". Homosexuality will indeed become the life style of the future if bills such as the one under discussion are enacted into law. Therefore, for your children's sake and your own sake, see to it that the N.Y. Gay Activists Alliance's changes in the N.Y. City Council are defeated in the bids for re-election.

This card has been written, published and mailed by:

Fred Cherry
Post Office Box 1017
Brooklyn, N.Y. 11208

AN OPEN LETTER TO "CHICKEN-SHIT" LLITERAS, SUPERINTENDANT OF OPERATIONS AT THE SAN JUAN CP

Look, you miserable chicken-shit, these cards are available. The fact that you got this card proves it. You are violating my rights by taking that faggot Postal Inspector Wilson's advice and refusing to accept my cards for mailing. Wilson knows these cards are available. That should have been obvious to you before now. If you don't believe me, ask Rodriguez.

Yours contemptuously, Fred Cherry

CIS:ECB:sbm
F. #762181

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 12 1977 ★

FRED CHERRY and ALAN CHARMATZ,
Plaintiffs,

: TIME A.M.
P.M.

-against-

: ORDER
: Civil Action No.

THE POSTMASTER GENERAL OF THE
UNITED STATES,

: 76 C 1485

:
Defendant.

-----x

The Court having heard oral argument on September 7, 1977 on plaintiffs' motion for the convening of a three-judge-court and on the defendant's motion to dismiss this action for lack of a justiciable case or controversy, and the Court having considered the briefs, affidavits and papers submitted by the parties, and the Court having found that there is no justiciable case or controversy based upon the defendant's representation that the plaintiffs have a right to mail the post cards in issue herein (the cards identified as bearing material entitled "N. Y. City Councilman Sell Out to Homosexual Child-Molesters") and that the postal service has no authority to withhold them and will not withhold them in the future and it appearing that there have only been two instances, neither of which is recent and one of which resulted from plaintiffs' own acts, where plaintiffs were mistakenly prevented from mailing the post cards in issue, it is hereby .

ORDERED (1) that the plaintiffs' motion for the convening of a three-judge-court is denied and that the defendant's motion to dismiss this action for lack of a justiciable case or controversy is granted; and it is further

ORDERED (2) that ~~the defendant~~ shall permit plaintiffs to mail the post cards in issue herein and shall not seize, detain, impound, forfeit, destroy or in any other manner impede their delivery.

Dated: Brooklyn, New York
September, , 1977

MOTION AND NOTICE OF MOTION
TO VACATE THE JUDGMENT
PURSUANT TO RULE 59(e), F.R.C.P.

To: Elaine C. Buck, Attorney for Defendant:

PLEASE TAKE NOTICE that upon the attached affidavit and upon all previous pleadings and proceedings herein, the undersigned will move this court at Courtroom One, United States Courthouse, 225 Cadman Plaza East, at 10:00 A.M. on the forenoon of October 5, 1977 (C.E.), for an order vacating the judgment entered on the docket on September 12, 1977 (C.E.), and for such other and further relief as the court may deem proper under the circumstances.

Fred Cherry

FRED CHERRY
Plaintiff, pro se
Post Office Address
Post Office Box 1017
Brooklyn, N.Y. 11202

AFFIDAVIT OF FRED CHERRY

State of New York }
County of Kings } ss

Fred Cherry, being duly sworn, deposes and says:

1. I did not set forth the facts in this affidavit previously for two reasons. The first reason is that I felt I had set forth sufficient facts previously. The second reason is that I was not expecting the Postal Service to submit perjured testimony.

2. In 1966, when the Post Office Department began to seize my postcards, I was not informed of this fact.

3. I wrote to the headquarters of the Post Office Department in Washington, D.C., inquiring as to whether my postcards were being detained. The Post Office Department did not respond to my queries. Instead of responding to my queries, I was threatened with criminal prosecution, in a letter from Saul J. Mindel.

4. Exhibit "A", attached hereto, is a true copy of the letter referred to in the previous paragraph.

5. When I returned to Brooklyn from Puerto Rico in May of 1966, I was informed by some of the people to whom I had sent postcards, that they had not received said postcards.

6. I asked Postal Inspector Nehil whether or not my cards were being delivered. Inspector Nehil professed not to know that my cards were being detained.

7. I then wrote to Congressman John Dowdy, and as a result of writing to said Congressman, I was granted an administrative hearing during the summer of 1966. This hearing led to the action reported at 272 F. Supp. 982.

8. Although I could conclude on that occasion that some of my postcards had been seized, I was never permitted to know any details, such as how many cards had been seized, or where and when they had been seized.

9. The postcards which I mailed in 1971, and which were the subject of the action reported at 332 F. Supp. 785, bore a message on the address side similar to the message on the address side of the cards in the present action.

10. Exhibit "B", attached hereto, is a true copy of the address side of the postcards described in the previous paragraph.

11. In 1972 I mailed a large number of postcards denouncing Senator George McGovern.

12. Exhibit "C", attached hereto, is a true copy of the message side of the postcards described in the previous paragraph.

13. Exhibit "D", attached hereto, is a true copy of the address side of the postcards described in paragraph # 11.

14. I mailed some of the postcards described in paragraph # 11 to various personal acquaintances. I made inquiries of said acquaintances and they all informed me that they had received said postcards.

15. Said personal acquaintances who informed me that they had received my postcards, as set forth in the previous paragraph, are the same acquaintances who informed me that they

did not receive the postcards in the present action, as set forth in paragraph # 2 of my previous affidavit.

16. Exhibit "E", attached hereto, is a true copy of page 13 of the November 20, 1972, issue of the obscene newspaper SCREW. This exhibit is offered to show that I mailed a large number of the postcards described in paragraph # 11, and that said postcards were not withheld from delivery.

17. On April 26, 1977, I sent \$25.00 to Anita Bryant's campaign. I mention this fact as evidence of my sincerity, which the defendant questions.

18. On March 17, 1975, I attempted to mail one of the postcards involved in the present action by registered mail, at the Old San Juan post office. Mr. Rafael Santos, who was the manager of that post office at that time, informed me that my postcard would not be accepted for mailing because, in his opinion, it violated Section 123.45 (now 123.44f) of the Postal Service Manual. Mr. Santos then referred me to the main post office on Roosevelt Avenue in Hato Rey.

19. On March 24, 1975, I brought two of the postcards in question to the main post office on Roosevelt Avenue in Hato Rey. Mr. Ignacio Padilla, the Window Service Supervisor, told me that there was a question as to the mailability of my postcards and that he could not resolve the matter. He then left the window. A few minutes later Mr. Stuart, whose affidavit is on file in this action, came to the window and informed me that a postcard could not be sent by registered mail.

20. I then went to the office of "Mailing Requirements" (Room 118A). The gentleman there, who was unusually helpful and courteous for a postal employee, told me that postcards can be sent by registered mail. He also told me that there was a question of whether my postcards violated Section 123.44f of the Postal Service Manual and that this question was out of his jurisdiction. He then referred me to the office of the Postal Inspectors.

21. I next went to the office occupied by Postal Inspector Edward Martinez and Special Investigator Norberto Stuart. Mr. Stuart, who is referred to in paragraph # 19, was extremely arrogant and obnoxious. At one point he shouted at me to "shut up". It was Mr. Stuart, not Mr. Martinez, who kept insisting that a postcard could not be sent by registered mail. At no time during this incident did Mr. Martinez, who was present, disagree with me in any way, nor did I shout at Mr. Martinez.

22. On May 5, 1975, when I mailed four postcards by registered mail from the Old San Juan Post Office, as set forth in paragraph # 9 of my previous affidavit, I received dated receipts for said postcards. Exhibit "F", attached hereto, is a true copy of said receipts. This demonstrates that Mr. Rivera committed perjury in his affidavit by stating that he had mailed the postcards in question back to me on the same day that he had received them.

23. At no time, except for the incident described in paragraph # 21 and in the letter sent to me by William Rivera (see attachment to affidavit of William Rivera), has any Postal Service employee told me that Section 161.32 of the Postal

Service Manual forbids the mailing of postcards by registered mail.

24. On February 22, 1977, I mailed one of the postcards involved in this action by registered mail from the Caparra Heights post office in Metropolitan San Juan, Puerto Rico. Said postcard was accepted for mailing and I received the return receipt a few days later.

25. On April 28, 1977, I mailed one of the postcards involved in the present action by registered mail from the main post office on Roosevelt Avenue in Hato Rey, Puerto Rico. On that occasion a person who introduced himself to me as Postal Inspector Henry Herrera asked permission to make a Xerox copy of said postcard. That is the only occasion on which I have been requested to consent to the copying of my postcard. Mr. Herrera also told the window service clerk to accept my card for mailing because of the fact that I had a case pending.

Brooklyn, New York, September 25th, 1977 (C.E.)

Sworn to and subscribed before me

this 21st day of September, 1977

Frank J. Cotully
FRANK J. COTULLY

Fred Cherry
FRED CHERRY

Notary Public, State of New York
No. 241513 - Qual. in Kings Co.
Commission Expires March 30, 1979

-4-

POST OFFICE DEPARTMENT
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D. C. 20260SJM:gs
28-A-4

APR 7 1966

Mr. Fred Cherry
603 Miramar Avenue
Santurce, Puerto Rico 00907

Dear Mr. Cherry:

This will acknowledge your letter of March 14, 1966, with reference to our advice to you that your cards may constitute a violation of Title 18, U. S. Code 1718 (Postal Manual 124.55).

I note that you have been mailing these cards as an act of civil disobedience since you believe that the statute is unconstitutional, "at least insofar as it prohibits the sending by postcard of true information of general public interest and where there is no question of extortion or other financial involvement."

Section 1718 of Title 18 is of course a criminal statute, so if you continue to mail the questioned cards you do so at your own risk. The validity of the statute was upheld as recently as last year when the U. S. Court of Appeals, Tenth District, ruled in the case of McCrossen v. U. S., 339 F.2d 810. You will be interested to know that in so doing the court held:

"Therefore, the prohibitions contained in that statute must be construed in the light of the regulatory power of Congress rather than in the light of any First Amendment limitation. In other words, in our consideration of this case, we must keep in mind that the gist of an offense under section 1718 is not the making and uttering of the prohibited writing. It is the depositing in the United States mail of an envelope containing on the outside thereof the prohibited writing. The statute is not, by its express terms, limited solely to 'libelous' statements. It encompasses also statements which are 'scurrilous', 'defamatory' or calculated and obviously intended to reflect injuriously upon the character or conduct of another."

For The General Counsel:

Sincerely yours,

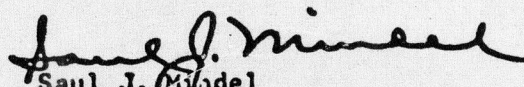

Saul J. Mindel
Assistant General Counsel
Mailability Division

EXHIBIT "A"

P. O. BOX 1017
BROOKLYN 2, N. Y.
RETURN REQUESTED

DO NOT
FOLD

NOTICE TO ALL CIVIL LIBERTARIANS

This card is the ninth in a continuing series of postcards. Although these cards contain nothing but truthful information and fair comment on persons and organizations in respect of public affairs, they nevertheless VIOLATE 18 U.S.C. 1718 (U.S. Penal Code). The sender of these cards actually faces imprisonment for the "crime" of revealing the truth!

**FIRST CLASS
MAIL**

McGOVERN'S HOMOSEXUAL SELL-OUT

ARE YOU AWARE that presidential candidate George McGovern has sold out to the organized homosexual movement of America and is aiding and abetting homosexuals to commit sodomy on children?

There is, at present, a bill before the New York City Council known as Intro 475, which, if enacted into law, would force the schools of New York City to hire homosexual child-molesters as teachers. On December 17, 1971, McGovern sent his representative, Eleanor Clark French, to the Council to read a statement in support of this bill. As a result of this and other pro-homosexual efforts, McGovern has received the acclaim of homosexuals everywhere. For example, GAY, the nation's largest-selling and most influential homosexual publication, has, on several occasions, published, *free of charge*, pro-McGovern political ads.

Spokesmen for various homosexual organizations, including the New York Gay Activists Alliance, have claimed that homosexuals are *not* child-molesters. That's the story they tell the general public. But when homosexual leaders speak to other homosexuals, they tell an entirely different story. For example, Gregory Battecock writing in the May 10th, 1971 issue of GAY, the nation's largest-selling and most influential homosexual publication, states: "I'd always thought that one of the reasons one bothered to be homosexual in the first place was that you could be promiscuous and a child-molester, without anyone so much as raising an eyebrow. After all, both were perfectly acceptable conventions—otherwise, why be homosexual? Certainly not to ape straight behavior and accept the strangulations and repressions contained therein!" Second, Martin Robinson, a leader of the New York Gay Activists Alliance and the New York Mattachine Society, stated that homosexuals were working for the right to make it easier to turn children into homosexuals. Third, the New York Gay Activists Alliance has publicly demanded the total repeal of *all* New York State sodomy laws, *including those laws which prohibit sodomy between adults and children*. Fourth, Pete Wilson of Radio Station WBAI-FM has, on one of its programs, broadcast a demand that parents permit homosexuals to have access to their children in order to teach those children about homosexuality. Wilson didn't limit this demand to the mere teaching of theory. Fifth, Franklin Kameny, Ph.D., the recent homosexual candidate for Congress, has authorized his name to appear on advertisements endorsing homosexual child-molesting. Sixth, the homosexual newspaper, GAY, in its edition of March 20, 1972, reports on a convention of homosexual organizations from all over the country. This convention was co-hosted by the New York Gay Activists Alliance. This convention drew up a political platform which includes planks demanding: "Repeal of all laws prohibiting private sexual acts involving consenting persons. Repeal of all laws governing the age of sexual consent." In other words, a convention of homosexuals from all over the country demands the right to persuade *your* children to commit sodomy with them. All of the fore-

going facts should put to rest the claim that homosexuals, in general, are *not* child-molesters. If homosexuals, in general, were really *not* child-molesters, then why would they demand the right to commit sodomy on *your* children?

The reason McGovern sold out to the organized homosexual movement of America is to get the editorial support of The New York Times. The Times has a blatant, pro-homosexual, editorial bias. For example, on July 3 and July 10 of 1966, The Times published advertisements for the book: GREEK LOVE. This book exhorts and encourages homosexual child-molesters to commit sodomy on young boys and instructs them on how to get away with it. The advertisement itself specifically recommends sex between men and young boys and is thus an incitement to lawbreaking. Furthermore, the Long Island Press, in its edition of May 23, 1972, reports the arrest of members of an international club devoted to sodomy between men and young boys. That club even went so far as to publish a newsletter. The contents of that newsletter were apparently derived, in part, from the book: GREEK LOVE. Therefore, not only has The Times published an advertisement inciting to crime, but crime has apparently been committed, incited by an advertisement published by The Times. On the other hand, The Times refuses to print any ad criticizing homosexuality, because the homosexuals who control The Times consider such an ad to be "offensive to good taste."

However The Times is more than willing to publish ads attacking other groups. For example, on February 16, 1972, The Times published a vicious racist advertisement, advocating that Blacks should be held down in a position of inferiority. On June 6, 1972, The Times published another racist advertisement—this one a full-page diatribe against Jews, stating, in part, that the Jews of the United States form "a potent Fifth Column". But The Times will not publish an ad attacking homosexuals, because the homosexuals who control The Times believe that homosexuals are superior to everyone else.

McGovern is, if nothing else, a shrewd politician. He knows he needs the editorial support of The New York Times to win the presidential election. He knows that he has to pander to the homosexuals who control The Times in order to get their support. That is why McGovern has chosen to sell out to the organized homosexual movement of America and use his influence to help homosexual child-molesters to commit sodomy on children.

This postcard has been written, published, and mailed by:

Fred Cherry
Post Office Box 1017
Brooklyn, N.Y. 11202

This message is not authorized, directly or indirectly, by any Federal candidate and no Federal candidate is responsible for any activities of the person publishing this message.

EXHIBIT "C"

**P. O. BOX 1017
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**DO NOT
FOLD**

NOTICE TO ALL CIVIL LIBERTARIANS

This card is the tenth in a continuing series of postcards. Although these cards contain nothing but truthful information and fair comment on persons and organizations in respect of public affairs, they nevertheless VIOLATE 18 U.S.C. 1718 (U.S. Penal Code). The sender of these cards actually faces imprisonment for the "crime" of revealing the truth!

**FIRST CLASS
MAIL**

EXHIBIT "D"

REGISTERED NO. 38329

Value \$ NV	Special Delivery \$
Reg Fee \$ 45	Return Receipt \$ 15
Handling Charge \$	Restricted Delivery \$
Postage \$ 13	☒ AIRMAIL

POSTMASTER (By) *CP*



MAILING OFFICE

FROM Fred Cherry
BX 1012
Brooklyn, N.Y.
TO Julius L. Horvitz
47 Spencer St.
St. John, New York

* G.P.O. 1974-503-269

REGISTERED NO. 38328

Value \$ NV	Special Delivery \$
Reg Fee \$ 45	Return Receipt \$ 15
Handling Charge \$	Restricted Delivery \$
Postage \$ 13	☒ AIRMAIL

POSTMASTER (By) *CP*

POSTMARK OF



MAILING OFFICE

FROM Fred Cherry
BX 1012
Brooklyn, N.Y.
TO Mrs. G. G. Calipurno, Esq.
Williams Corbett & Calipurno
239 7th St.
Washington, D.C.

* G.P.O. 1974-503-269

REGISTERED NO. 38331

Value \$ NV	Special Delivery \$
Reg Fee \$ 45	Return Receipt \$ 15
Handling Charge \$	Restricted Delivery \$
Postage \$ 13	☒ AIRMAIL

POSTMASTER (By) *CP*

POSTMARK OF



MAILING OFFICE

FROM Fred Cherry
BX 1012
Brooklyn, N.Y.
TO Alfred Harder, Esq.
P.O. Box 1052
Baltimore, Maryland

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REGISTERED NO. 38330

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Handling Charge \$	Restricted Delivery \$
Postage \$ 13	☒ AIRMAIL

POSTMASTER (By) *CP*

POSTMARK OF



MAILING OFFICE

FROM Fred Cherry
BX 1012
Brooklyn, N.Y.
TO Mrs. G. G. Calipurno, Esq.
Williams Corbett & Calipurno
239 7th St.
Washington, D.C.

* G.P.O. 1974-503-269

EXHIBIT "F"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OCT 14 1977

-----x
FRED CHERRY and ALAN CHARMATZ,

76-C-1485

Plaintiffs,

v.

ORDER

THE POSTMASTER-GENERAL OF THE
UNITED STATES,

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

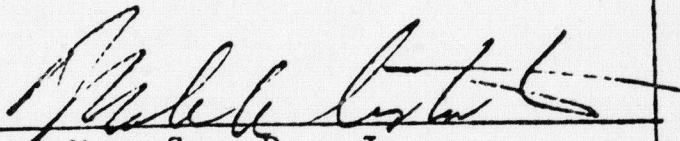
Defendants.

★ OCT 17 1977 ★

-----x TIME A.M. 12-
P.M.-----

COSTANTINO, D.J.

Plaintiffs' motion to vacate this court's order
of September 12, 1977 is denied. So ordered.



U. S. D. J.